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6-16-04

Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 16. - WATER POLLUTION CONTROL

28-16-56c. Sewage permit fees; definitions. For the purposes of K.A.R. 28-16-56d, the following terms shall be defined as ~~set out~~ specified in this regulation:

(a) ~~"Sewage"~~ shall be defined as in K.S.A. 65-164.

(b) ~~"Domestic sewage"~~ means sewage originating primarily from kitchen, bathroom and laundry sources, including waste from food preparation, dishwashing, garbage-grinding, toilets, baths, showers and sinks.

(c) ~~"Municipal wastewater treatment facility"~~ means a facility serving a city, county, township, sewer district, or other local governmental unit, or a facility serving a state or federal agency, establishment, or institution, for the purpose of treating primarily domestic sewage by physical, chemical or biological means or by a combination of those methods.

(d) ~~"Commercial wastewater treatment facility"~~ means a facility serving a commercial enterprise or group or a combination thereof, for the purposes of treating primarily domestic sewage by physical, chemical or biological means or by a combination of those methods.

~~"Commercial wastewater treatment facility"~~ shall include any slaughter house with an average slaughter rate of 50 animals or less per week.

(e) ~~"Industrial wastewater treatment facility"~~ means a facility serving a city, county, township, sewer district, or other governmental unit, a state or federal agency, establishment, or

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~~institution; an industrial or commercial enterprise; or a group or combination thereof, for the purpose of treating primarily sewage or process-generated wastewater, other than domestic sewage, by physical, chemical or biological means or by a combination of those methods.~~

~~“Industrial wastewater treatment facility” shall include any truck washing facility except truck washing facilities for animal waste, municipally-owned electricity generating facilities, facilities using contaminated groundwater for cooling or process water, and water treatment plants.~~

~~(f) “Point source” means any discernible, confined, and discrete conveyance from which pollutants are or may be discharged, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, confined animal feeding facility, landfill leachate collection system, or any vessel or other floating craft. This term shall not include return flows from irrigated agriculture or agricultural storm water runoff.~~

~~(g) “Storm water discharge” means any discharge of storm water runoff from a point source. This designation may include storm water runoff from a municipal, industrial or commercial facility, or from a construction site, or a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers.~~

~~(h) “Cooling water discharge” means cooling water discharged from any system in which there is no contact with process pollutants and where there is no measured chemical buildup.~~

~~(i) “Treated cooling water discharge” means cooling water discharged from any system in~~

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~~which there is no contact with process pollutants and where there is no measured chemical buildup other than chemicals added for biological or corrosion control, or from evaporative losses.~~

~~(j) "Dewatering discharge" means a discharge resulting from drainage or removal of water from a lagoon, quarry, pit or any other holding device. Dewatering discharge shall not include any discharge in which there is measured chemical buildup or to which chemicals have been added for any purpose.~~

~~(k) "Pretreatment permit" means a permit issued to a source subject to pretreatment standards and which discharges to a municipal wastewater treatment facility not having an approved pre-treatment program.~~

~~(l) "General permit" means an NPDES "permit" issued under K.A.R. 28-16-150 et seq.~~

~~(m) "Truck washing facility for animal wastes" means a facility which exists solely for the purpose of washing animal wastes from trucks or trailers.~~

~~(n) "Confined feeding facility" means any lot, pen, pool, or pond which is:~~

~~(1) used for the confined feeding of animals or fowl for food, fur or pleasure purposes;~~

~~(2) not normally used for raising crops; and~~

~~(3) not used for growing vegetation for animal food.~~

~~Confined feeding facilities on separate pieces of land without a contiguous ownership boundary shall be classified as separate operations and each operation shall be assessed a fee under K.A.R.~~

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28-16-56d:

(o) ~~"Animal unit"~~ means a unit of measurement calculated by adding the following numbers:

- ~~(1) the number of beef cattle weighing more than 700 pounds multiplied by 1.0;~~
- ~~(2) plus the number of cattle weighing less than 700 pounds multiplied by 0.5;~~
- ~~(3) plus the number of mature dairy cattle multiplied by 1.4;~~
- ~~(4) plus the number of swine weighing more than 55 pounds multiplied by 0.4;~~
- ~~(5) plus the number of sheep or lambs multiplied by 0.1;~~
- ~~(6) plus the number of horses multiplied by 2.0;~~
- ~~(7) plus the number of turkeys multiplied by 0.018;~~
- ~~(8) plus the number of laying hens or broilers, if the facility has continuous overflow watering, multiplied by 0.01;~~
- ~~(9) plus the number of laying hens or broilers, if the facility has a liquid manure system, multiplied by 0.033; and~~
- ~~(10) plus the number of ducks multiplied by 0.2.~~

~~However, each head of cattle will be counted as one full animal unit for the purpose of determining the need for a federal permit.~~

~~(p) "Animal unit capacity" means the maximum number of animal units which a confined feeding facility is designed to accommodate at any one time.~~

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(a) "Animal unit," for the purpose of determining permit fees, has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(b) "Animal unit capacity" means the maximum number of animal units that a confined feeding facility is designed to accommodate at any one time.

(c) "Commercial wastewater treatment facility" means a facility serving a commercial enterprise or group or a combination of commercial enterprises, for the purpose of treating primarily domestic sewage by physical, chemical, or biological means or by a combination of these methods. This term shall include any slaughterhouse with an average slaughter rate of 50 animals or less per week.

(d) "Confined feeding facility" has the meaning specified in K.S.A. 65-171d, and amendments thereto.

(e) "Cooling water discharge" means cooling water discharged from any system in which there is no contact with process pollutants and there is no measured chemical buildup.

(f) "Dewatering discharge" means a discharge resulting from the drainage or removal of water from a lagoon, quarry, pit, or any other holding device. This term shall not include any discharge in which there is a measured chemical buildup or to which chemicals have been added for any purpose.

(g) "Domestic sewage" means sewage originating primarily from kitchen, bathroom, and laundry sources, including waste from food preparation, dishwashing, garbage grinding, toilets,

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baths, showers, and sinks.

(h) "General permit" has the meaning specified in 40 CFR 122.2 and adopted by reference in K.A.R. 28-16-151.

(i) "Industrial wastewater treatment facility" means a facility treating primarily sewage or process-generated wastewater, other than domestic sewage, by physical, chemical, or biological means or by a combination of these methods.

This term shall not include any private truck-washing or trailer-washing facility for washing animal waste from not more than two trucks or trailers, or a combination of both, owned by the private truck-washing or trailer-washing facility.

(j) "Municipal wastewater treatment facility" means a facility serving a city, county, township, sewer district, or other local governmental unit, or a facility serving a state or federal agency, establishment, or institution, for the purpose of treating primarily domestic sewage by physical, chemical, or biological means or by a combination of these methods.

(k) "Point source" means any discernible, confined, and discrete conveyance from which pollutants are or can be discharged, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, confined animal feeding facility, landfill leachate collection system, and any vessel or other floating craft. This term shall not include the return flows from irrigated agriculture or agricultural storm water runoff.

(l) "Pretreatment permit" means a permit that is issued to a source subject to

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pretreatment standards and that discharges to a municipal wastewater treatment facility not having an approved pretreatment program.

(m) "Private truck-washing facility for animal wastes" means a truck-washing facility for animal wastes that exists primarily for the purpose of washing animal wastes from trucks or trailers owned by the facility.

(n) "Sewage" has the meaning specified in K.S.A. 65-164, and amendments thereto.

(o) "Storm water discharge" means any discharge of storm water runoff from a point source. This term may include any of the following:

(1) Storm water runoff from a municipal, industrial, or commercial facility or from a construction site;

(2) a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff; or

(3) a system of discharges from municipal storm sewers that are separate from sanitary sewers.

(p) "Treated cooling water discharge" means cooling water discharged from any system in which there is no contact with process pollutants and there is no measured chemical buildup other than chemicals added for biological or corrosion control, or from evaporative losses.

(q) "Truck-washing facility for animal wastes" means a truck-washing facility that exists primarily for the purpose of washing animal wastes from trucks or trailers. (Authorized by and

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implementing K.S.A. ~~1995~~ 2003 Supp. ~~65-166a~~ 65-171d; effective Sept. 27, 1996; amended

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5-7-04

Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 16. - WATER POLLUTION CONTROL

28-16-56d. Sewage permit fees; schedules. (a) Each applicant person applying for a permit pursuant to K.S.A. 65-165, and amendments thereto, and each holder of a permit issued pursuant to K.S.A. 65-165, and amendments thereto, shall submit the appropriate fee in accordance with the following schedule:

Schedule of Fees at Annual Rate	
Classification	Unit Rates and Minimum Rates
(1) Municipal or commercial wastewater treatment facility.	\$185/year/million gallons per day permitted capacity and for any portion thereof.  \$185 minimum fee per year.
(2) Municipal <del>stormwater</del> <u>storm water</u> system	
(A) <del>100,000+</del> population <u>less than</u> <u>100,000 persons.</u>	<u>None</u>
(B) <u>population of 100,000 persons or greater</u>	\$2,000 per year.

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Schedule of Fees at Annual Rate	
(3) Industrial wastewater treatment facility.	\$320/year/million gallons per day permitted capacity and for any portion thereof.  \$320 minimum fee per year.
(4) Cooling water discharge <del>+</del> surface disposal. <u>Surface disposal:</u> (A) <u>Non-contact cooling water.</u>	\$60 per year.
(5) (B) treated cooling water <del>+</del> surface disposal.	\$120/year/million gallons per day permitted capacity and for any portion thereof.  \$120 minimum fee per year.
(6) (5) Dewatering discharge.	\$60 per year.
(7) (6) Pretreatment permit.	\$320 per year.
(8) (7) General permit	\$60 per year.

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Schedule of Fees at Annual Rate	
<p>(9) (8) Industrial stormwater <u>storm water</u> discharge <del>/-</del> <del>general permit</del>.</p> <p>(A) <u>General permit</u></p> <p>(10) (B) <del>Industrial stormwater discharge</del> <del>/-</del> individual permit.</p>	<p>\$60 per year.</p> <p>\$320 per year.</p>
<p>(11) (9) Confined feeding facility <u>or public livestock market required to register or obtain a permit:</u></p> <p>(A) Initial registration fee, regardless of <u>animal unit</u> capacity</p> <p>(B) permit fee:</p> <p>(i) Animal unit capacity of 999 or less</p> <p>(ii) animal unit capacity of 1,000-4,999</p> <p>(iii) animal unit capacity of 5,000-9,999</p> <p>(iv) animal unit capacity of 10,000 or more.</p>	<p>\$25 one-time fee.</p> <p>\$25 per year.</p> <p>\$100 per year.</p> <p>\$200 per year.</p> <p>\$400 per year.</p>

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Schedule of Fees at Annual Rate	
(12) (10) Truck-washing facility for animal wastes.	
(A) <u>Private truck-washing facility for animal wastes with any combination of owned trailers or trucks totaling no more than two</u>	<u>\$25 per year.</u>
(B) <u>Private truck-washing facility for animal wastes with any combination of owned trailers or trucks totaling more than two</u>	<u>\$200 per year.</u>
(C) <u>all other truck-washing facilities for animal wastes.</u>	<u>\$320 per year.</u>

(b)(1) Plans and specifications shall not be reviewed and processing and issuance of a permit shall not take place until the required fee is paid. Fees shall be made payable to the "Kansas department of health and environment -- water pollution control permit."

(2) Fees paid in accordance with the ~~above~~ schedule in subsection (a), including fees paid for facilities ~~which that~~ are never built or ~~which that~~ are abandoned, shall not be refunded.

(3) Each ~~applicant~~ operator who is operating a facility in which two or more of the wastewaters identified in the ~~above fee schedule~~ subsection (a) are discharged shall pay the

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appropriate fee for each type of wastewater discharged, even if only one permit has been issued for the facility.

(4) Permit fees shall be based on the minimum rate or unit rate, whichever is greater. The full unit rate shall be applied to any portion of a unit. The fee per unit shall not be prorated.

(5) A permit fee shall be paid annually in accordance with ~~the above schedule~~ subsection (a).

(6) If ownership of the permitted facility changes during the term of a valid permit, no additional fee shall be required unless a change occurs ~~which~~ that results in a new or expanded facility or operation.

(7) If a change occurs during the term of a valid permit ~~which~~ that results in an expanded capacity of the facility or operation, a new application shall be required. Upon approval, the existing permit shall be amended and shall continue in effect for the remainder of its the original term, unless revoked. The additional fee shall be based only on the difference between the original permitted capacity and the expanded capacity. The new annual fee for the expanded facility shall be based on the unit rate at the expanded capacity or the minimum rate, whichever is greater, for the remainder of the term of the permit. (Authorized by and implementing K.S.A. ~~1995~~ 2003 Supp. 65-166a and 65-171d; effective Sept. 27, 1996; amended P- \_\_\_\_\_.)

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3-2-06

Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18. - ANIMAL AND RELATED WASTE CONTROL

28-18-1. Definitions. The following ~~words, terms, phrases,~~ and abbreviations shall have the following meanings, unless otherwise defined in an individual regulation or unless a different meaning of a word is clear from the context in which it is used. ~~Words, Terms, phrases,~~ and abbreviations not provided in ~~the regulations of this article~~ shall have the meaning defined meanings specified in K.S.A. 65-101 et seq. and amendments thereto, ~~K.A.R. 28-5-1 et seq., K.A.R. 28-16-1 et seq., K.A.R. 28-18a-1 et seq., K.A.R. 28-30-1 et seq.,~~ articles 5, 16, 18a, and 30; or the clean water act (CWA). ~~When~~ If the same word is defined both in Kansas statutes or the regulations of this article and in any federal regulation adopted by reference in these regulations or in state regulations referenced in this article; and the definitions are not identical, the definition prescribed in Kansas statutes or the regulations of this article shall control.

(a) "Animal unit" ~~is as defined~~ has the meaning specified in K.S.A. ~~1997 Supp. 65-171d (c)(3), as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.~~

(b) "Animal unit capacity" ~~is as defined~~ has the meaning specified in K.S.A. ~~1997 Supp. 65-171d (c)(4), as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.~~

(c) "Animal waste management system" means any land, structures, or practices utilized for the collection, containment, storage, distribution, land application, or disposal of animal or

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other process wastes generated by confined feeding operations. ~~An animal waste management system includes~~ This term shall include any of the following:

- (1) Site grading to divert extraneous, uncontaminated precipitation runoff around the confined feeding facility;
  - (2) structures designed and constructed to collect, control the flow of, and direct animal or other process wastes;
  - (3) vegetation cover utilized for controlling erosion or for filtering animal or other process wastes;
  - (4) tanks, manure pits, or other structures designed and constructed to collect or store animal or other process wastes;
  - (5) waste-retention lagoons or ponds;
  - (6) land used for the application, utilization, or disposal of animal or other process wastes; and
  - (7) waste treatment facilities.
- (d) "Certification" means a document; issued by the secretary in lieu of a water pollution control permit, ~~from the department~~ indicating that the facility meets ~~department requirements~~

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applicable animal waste management statutes and regulations and does not represent a significant water pollution potential.

(e) "Change in operation" ~~or and~~ "modification" ~~means~~ mean any of the following:

(1) Expansion or enlargement of a facility beyond the scope or boundaries established by registration, permit, certification, or approved plans and specifications;

(2) any increase in the animal unit capacity beyond that authorized by a permit or certification; or

(3) a change in construction or operation of a confined feeding facility that ~~may affect~~ affects the collecting, storage, handling, treatment, utilization, or disposal of animal or other process wastes.

(f) "Clean water act" ~~or and~~ "CWA" ~~means public law 92-500, as amended by public law 95-217, public law 95-576, public law 96-483, and public law 97-117, and~~ mean the federal water pollution control act, 33 U.S.C. 1251 et seq., as in effect on February 4, 1987 November 27, 2002.

(g) "Closure plan" means a written document that identifies the practices and procedures that the operator of a confined feeding facility plans to use when closing the facility or any part of the facility.

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(h) ~~"Confined feeding facility" is as defined~~ has the meaning specified in K.S.A. 1997 Supp. 65-171d (c)(2), ~~as amended by L. 1998, ch. 143, sec. 1, and amendments thereto, exclusive~~ of swine.

(h) (i) ~~"Department" or and~~ "KDHE" means mean the Kansas department of health and environment.

(i) (j) ~~"Director"~~ means the director of the division of environment of the Kansas department of health and environment.

(i) (k) ~~"Division"~~ means the division of environment, Kansas department of health and environment.

(i) "Entity," for the purposes of these regulations, means a person, individual, association, company, corporation, institution, group of individuals, joint venture, partnership, or federal, state, county, or municipal agency or department.

(i) (m) ~~"Environmental protection agency" or and~~ "EPA" means mean the United States environmental protection agency.

(i) (n) "Equus Beds," for the purposes of these regulations, means an aquifer underlying the sections of land listed in the following table:

<u>County</u>	<u>Range</u>	<u>Township</u>	<u>Section</u>
<u>Harvey</u>	<u>01W</u>	<u>22S</u>	<u>06, 07, 18, 19, 30, 31</u>
<u>Harvey</u>	<u>01W</u>	<u>23S</u>	<u>06, 07, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31,</u> <u>32, 33, 34</u>

<u>County</u>	<u>Range</u>	<u>Township</u>	<u>Section</u>
<u>Harvey</u>	<u>01W</u>	<u>24S</u>	<u>03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19,</u> <u>20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34</u>
<u>Harvey</u>	<u>02W</u>	<u>22S</u>	<u>All sections</u>
<u>Harvey</u>	<u>02W</u>	<u>23S</u>	<u>All sections</u>
<u>Harvey</u>	<u>02W</u>	<u>24S</u>	<u>All sections</u>
<u>Harvey</u>	<u>03W</u>	<u>22S</u>	<u>All sections</u>
<u>Harvey</u>	<u>03W</u>	<u>23S</u>	<u>All sections</u>
<u>Harvey</u>	<u>03W</u>	<u>24S</u>	<u>All sections</u>
<u>McPherson</u>	<u>01W</u>	<u>19S</u>	<u>31, 32, 33, 34, 35</u>
<u>McPherson</u>	<u>01W</u>	<u>20S</u>	<u>02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 14, 15, 16,</u> <u>17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33</u>
<u>McPherson</u>	<u>01W</u>	<u>21S</u>	<u>05, 06, 07, 18, 19, 30, 31</u>
<u>McPherson</u>	<u>02W</u>	<u>21S</u>	<u>12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,</u> <u>28, 29, 30, 31, 32, 33, 34, 35, 36</u>
<u>McPherson</u>	<u>03W</u>	<u>18S</u>	<u>28, 29, 30, 31, 32, 33</u>
<u>McPherson</u>	<u>03W</u>	<u>19S</u>	<u>04, 05, 06, 07, 08, 09, 15, 16, 17, 18, 19, 20, 21,</u> <u>22, 27, 28, 29, 30, 31, 32, 33, 34</u>
<u>McPherson</u>	<u>03W</u>	<u>20S</u>	<u>03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19,</u> <u>20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34, 35</u>

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<u>County</u>	<u>Range</u>	<u>Township</u>	<u>Section</u>
<u>McPherson</u>	<u>03W</u>	<u>21S</u>	<u>02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 13, 14, 15,</u> <u>16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28,</u> <u>29, 30, 31, 32, 33, 34, 35, 36</u>
<u>McPherson</u>	<u>04W</u>	<u>18S</u>	<u>20, 21, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36</u>
<u>McPherson</u>	<u>04W</u>	<u>19S</u>	<u>01, 02, 03, 04, 09, 10, 11, 12, 13, 14, 15, 22, 23,</u> <u>24, 25, 26, 27, 34, 35, 36</u>
<u>McPherson</u>	<u>04W</u>	<u>20S</u>	<u>01, 02, 03, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23,</u> <u>24, 25, 26, 27, 28, 33, 34, 35, 36</u>
<u>McPherson</u>	<u>04W</u>	<u>21S</u>	<u>01, 02, 03, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25,</u> <u>26, 27, 34, 35, 36</u>
<u>Reno</u>	<u>04W</u>	<u>22S</u>	<u>All sections</u>
<u>Reno</u>	<u>04W</u>	<u>23S</u>	<u>All sections</u>
<u>Reno</u>	<u>04W</u>	<u>24S</u>	<u>All sections</u>
<u>Reno</u>	<u>04W</u>	<u>25S</u>	<u>All sections</u>
<u>Reno</u>	<u>04W</u>	<u>26S</u>	<u>All sections</u>
<u>Reno</u>	<u>05W</u>	<u>22S</u>	<u>All sections</u>
<u>Reno</u>	<u>05W</u>	<u>23S</u>	<u>All sections</u>
<u>Reno</u>	<u>05W</u>	<u>24S</u>	<u>All sections</u>
<u>Reno</u>	<u>05W</u>	<u>25S</u>	<u>All sections</u>
<u>Reno</u>	<u>05W</u>	<u>26S</u>	<u>All sections</u>

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<u>Reno</u>	<u>06W</u>	<u>22S</u>	<u>All sections</u>
<u>Reno</u>	<u>06W</u>	<u>23S</u>	<u>All sections</u>
<u>Reno</u>	<u>06W</u>	<u>24S</u>	<u>All sections</u>
<u>Reno</u>	<u>06W</u>	<u>25S</u>	<u>All sections</u>
<u>Reno</u>	<u>06W</u>	<u>26S</u>	<u>All sections</u>
<u>Reno</u>	<u>07W</u>	<u>22S</u>	<u>All sections</u>
<u>Reno</u>	<u>07W</u>	<u>23S</u>	<u>All sections</u>
<u>Reno</u>	<u>07W</u>	<u>24S</u>	<u>All sections</u>
<u>Reno</u>	<u>07W</u>	<u>25S</u>	<u>All sections</u>
<u>Reno</u>	<u>07W</u>	<u>26S</u>	<u>All sections</u>
<u>Sedgwick</u>	<u>01E</u>	<u>26S</u>	<u>06, 07, 08, 17, 18, 19, 20</u>
<u>Sedgwick</u>	<u>01W</u>	<u>25S</u>	<u>03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18, 19,</u> <u>20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34,</u> <u>35, 36</u>
<u>Sedgwick</u>	<u>01W</u>	<u>26S</u>	<u>01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13,</u> <u>14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28,</u> <u>29, 30, 31, 32</u>
<u>Sedgwick</u>	<u>01W</u>	<u>27S</u>	<u>05, 06</u>
<u>Sedgwick</u>	<u>02W</u>	<u>25S</u>	<u>All sections</u>

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<u>Sedgwick</u>	<u>02W</u>	<u>26S</u>	<u>01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13,</u> <u>14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,</u> <u>27, 34, 35, 36</u>
<u>Sedgwick</u>	<u>02W</u>	<u>27S</u>	<u>01</u>
<u>Sedgwick</u>	<u>03W</u>	<u>25S</u>	<u>01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13,</u> <u>14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27,</u> <u>28, 29, 33, 34, 35, 36</u>
<u>Sedgwick</u>	<u>03W</u>	<u>26S</u>	<u>01, 02, 03, 04, 11, 12</u>

(o) "Federal permit," or "national pollutant discharge elimination system permit," or and "NPDES permit" ~~means~~ mean an authorization, license, or equivalent control document issued by the EPA or an approved state to implement the requirements of 40 C.F.R. Parts 122, 123, 124, and 412.

(m) (p) "Food animals" means animals, fish, or fowl produced for consumption.

(n) (q) "Fur animals" means ~~any animal~~ animals raised for its the skin, pelt, or fur.

(o) (r) "Groundwater," ~~means;~~ as used in this article, means water located under the surface of the land that is or can be the source of supply for wells, springs, ~~or seeps, or streams,~~ or that is held in aquifers. For the purposes of this article, groundwater shall be considered

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capable of being a source of supply for wells if at least one of the following conditions is met:

(1) The groundwater can be produced at a rate of 10 gallons or more per hour from a borehole with a diameter of nine or fewer inches. In determining the groundwater production rate for an excavation, borehole, or existing water or monitoring well, the quantity of produced water shall be adjusted for comparison purposes to the surface area of a borehole with a diameter of nine inches.

(2) The groundwater is currently being used within ½ mile of the proposed lagoon, regardless of the rate at which the groundwater can be produced.

(3) There is evidence of past groundwater use within ½ mile of the proposed lagoon.

(p) (s) "Habitable structure" is as defined has the meaning specified in K.S.A. 1997 Supp. 65-171d-(c)(5), as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.

(t) "Impermeable synthetic membrane liner" means a commercially manufactured membrane liner composed of synthetic materials commonly identified as being plastic, plastic polymer, or other synthetic materials that, when installed, provide for the more stringent of either of the following:

(1) A maximum monitored or calculated seepage rate of 1/64 inch per day; or

(2) the liner manufacturer's criteria for the maximum monitored or calculated seepage rate for the installed membrane liner, expressed in units of volume per unit area per unit of time

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(gallons per square foot per day).

~~(q)~~ (u) "Land application" means the distribution of animal or other process wastes onto, or incorporation into, the soil mantle for the purpose of disposal or utilization by crops or vegetation.

~~(r)~~ (v) "Liner" means any designed barrier in the form of in situ, layer, membrane, or blanket materials utilized or installed to reduce the potential for a significant hydrologic connection between animal or other process wastes that are controlled or retained by animal waste management systems and waters of the state.

(w) "Maximum soil liner seepage rate" and "specific discharge" mean the flow rate of water through the liner of a waste-retention lagoon or pond and shall be expressed as velocity (distance/time). The maximum seepage rate shall be calculated as  $v = k(h/d)$ , in which "k" is the hydraulic conductivity (coefficient of permeability) and "(h/d)" is the hydraulic gradient. The hydraulic gradient is the maximum vertical distance "h" measured from the liquid surface to the liner bottom, divided by the thickness of the soil liner "d." When calculating the maximum seepage rate, the maximum design depth, not considering design freeboard, shall be used.

~~(s)~~ (x) "Minimum standards of design, construction, and maintenance" means the following:


(1) Effluent standards and limitations;

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(2) other performance standards for treatment or utilization; and

(3) other standards of design, construction, and maintenance for confined feeding

facilities or animal waste management systems, published by ~~the department~~ KDHE.

(t) (y) "Monitoring" means all procedures using any of the following methods:

(1) Either systematic inspection or collection and analysis of data on the operational parameters of ~~an animal~~ a confined feeding facility or ~~its pollution controls~~ an animal waste management system; or

(2) the systematic collection and analysis of data on the quality of the animal or other process wastes, groundwater, surface water, or soils on or in the vicinity of the ~~animal~~ confined feeding facility or ~~areas utilized for land application of the animal or other process wastes~~ animal waste management system.

(u) (z) "National pollutant discharge elimination system" ~~or~~ and "NPDES" means mean the national system for the issuance of permits under ~~42~~ 33 U.S.C. section 1342, and ~~includes~~ shall include any state or interstate program that has been approved by the EPA administrator, in whole or in part, pursuant to ~~42~~ 33 U.S.C. section 1342.

(aa) "Nutrient management plan" means a written document that identifies the practices and procedures that the operator of a confined feeding facility that is required to obtain a federal

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permit plans to use to operate and maintain the animal waste management system and to manage the handling, storage, utilization, and disposal of wastes generated by the facility.

(v) (bb) "Oil or gas well" shall have the meaning of assigned to the term "well" as defined in K.S.A. 1997 Supp. 55-150(i), and amendments thereto.

(w) (cc) "Operator" means an individual, association, company, corporation, municipality, group of individuals, joint venture, partnership, a state or federal agency or department, or any business owning, leasing, or having charge or control of one or more confined feeding facility facilities.

(x) ~~"Water pollution control permit" means an authorization, license, or equivalent control document issued by the department. A permit shall not include any document that has not yet been the subject of final action by the department, including a draft or proposed permit.~~

(y) (dd) "Pleasure animals" means dogs, cats, rabbits, horses, and exotic animals.

(z) (ee) "Point source" ~~is as defined~~ has the meaning specified in K.A.R. 28-16-28b (mm).

(aa) (ff) "Pollution" ~~is as defined~~ has the meaning specified in K.S.A. 1997 Supp. 65-171d(c)(1), as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.

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~~(bb)~~ (gg) "Precipitation runoff" means the rainwater or the meltwater that is derived from snow, hail, sleet, or other forms of atmospheric precipitation and that flows by gravity over the surface of the land.

~~(cc)~~ (hh) (1) "Process wastes" means any of the following:

- (A) Excrement from animals, wastewater, and animal carcasses;
- (B) precipitation that comes into contact with any manure, litter, bedding, or other raw, intermediate, or final material or product used in or resulting from the production of animals or direct products, including meat, milk, ~~or~~ and eggs;
- (C) spillage or overflow from animal or poultry watering systems;
- (D) wastes from washing, cleaning, or flushing pens, barns, manure pits, equipment, trucks, trailers, milking parlors, milking equipment, ~~or~~ and other associated animal facilities;
- (E) wastes from washing animals or spraying ~~of~~ animals for cooling;
- (F) wastes from dust control;
- (G) boiler blowdown and water softener regenerate wastes;
- (H) precipitation runoff from confinement, loading, and unloading areas;
- (I) spillage of feed, molasses, ~~or~~ animal wastes, or any other process wastes described in this regulation;
- (J) discharges from land application fields that occur during application;

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(K) precipitation runoff from land application fields, if liquid or ~~liquid~~ concentrated ~~liquid~~ wastes are applied during frozen, snow-covered, or saturated soil conditions without approval by the department;

(L) raw, intermediate, or finished materials associated with wastes or contaminated ~~stormwater~~ storm water runoff from animal waste or dead animal composting operations;

(M) silo liquors; or

(N) flows or runoff from waste storage areas.

(2) Process wastes shall not include animal wastes spilled by trucks transporting livestock on city, township, county, state, or federal streets, roads, or highways.

(ii) "Public livestock market" has the meaning specified in K.S.A. 47-1001, and amendments thereto. For the purposes of these regulations, this term shall include public livestock markets where federal veterinary inspections are regularly conducted.

~~(dd)~~ (jj) "Registration" means any required fee and the properly completed and executed documents designated by the division and any additional required documents or information necessary for determining the need for a water pollution control permit.

(kk) "Salt solution mining well" has the meaning specified in K.S.A. 55-1,120, and amendments thereto.

~~(ee)~~ (ll) "Secretary" means the secretary of the Kansas department of health and

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environment.

~~(ff) "Maximum seepage rate" or "specific discharge" means the flow rate through the liner and is expressed as velocity (distance/time). The maximum seepage rate shall be calculated as  $v = k(h/d)$ , in which "k" is the hydraulic conductivity (coefficient of permeability) and "(h/d)" is the hydraulic gradient. The hydraulic gradient is the maximum vertical distance "h" measured from the liquid surface to the liner bottom divided by the thickness of the soil liner "d." When calculating the maximum seepage rate, the maximum operating depth, not considering design freeboard, shall be used.~~

(mm)(1) "Sensitive groundwater areas," for the purpose of these regulations, means aquifers generally comprised of alluvial aquifers, the area within the boundaries of the Equus Beds groundwater management district no. 2 (GMD #2), and the dune sand area located south of the great bend of the Arkansas River. Each sensitive groundwater area shall be any section of land listed in "Kansas sensitive groundwater areas for wastewater lagoons," prepared by KDHE and dated January 1, 2005, which is adopted by reference in K.A.R. 28-16-160.

(2) Any operator proposing a new animal waste-retention lagoon or expansion of an existing animal waste-retention lagoon may request that the director make a site-specific sensitive groundwater area determination. The request shall be made in writing to the director. The request shall contain supporting data and information and an explanation of why the area in

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question should not be considered to be a sensitive groundwater area, for the purpose of these regulations.

(gg) (nn) "Sewage" is ~~as defined~~ has the meaning specified in K.S.A. 1997 Supp. 65-164 (b), and amendments thereto.

(hh) (oo) "Significant water pollution potential" means any of the following, as determined by the secretary:

(1) A livestock or animal feeding operation that utilizes structures designed and constructed to collect, control the flow of, and direct animal or other process wastes, tanks, manure pits, or other structures designed and constructed to collect or store animal or other process wastes, waste-retention lagoons or ponds, or waste treatment facility or facilities;

(2) lots, pens, or concentrated feeding areas ~~located~~ with creeks, streams, intermittent waterways, or any other conveying channel or device that has the potential to carry pollutants to waters of the state running through or proximate to ~~them~~ the lots, pens, or concentrated feeding areas;

(3) any operation that cannot retain or control animal or other process wastes on the operator's facility or property or adjacent property without the owner's permission; or

(4) a livestock or animal feeding operation that has been determined to practice improper

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collection, handling, or disposal of animal or other process wastes that have the potential to degrade or impair the quality of any waters of the state.

(ii) (pp) "Surface waters," for water quality purposes, ~~is as defined~~ has the meaning specified in K.A.R. 28-16-28b (ww).

(qq) "Truck-washing facility for animal wastes" means a truck-washing facility that exists solely for the purpose of washing animal wastes from trucks or trailers.

(jj) (rr) "Variance" means the ~~department's~~ secretary's written approval or permit authorizing a proposed action that knowingly results in a lack of conformity with one or more provisions of these regulations or the minimum standards of design, construction, and maintenance. ~~Any~~ Each variance ~~approved by the department~~ authorized by the secretary shall be deemed to ~~adequately~~ protect public health and the environment and to comply with the ~~general~~ intent of these regulations and with federal NPDES permit requirements.

(ss) "Waste management plan" means a written document that identifies the practices and procedures that the operator of a confined feeding facility not required to obtain a federal permit plans to use to operate and maintain the animal waste management system and to manage the handling, storage, utilization, and disposal of wastes generated by the facility.


(kk) (tt) "Waste-retention lagoon or pond" means excavated or diked structures, or natural depressions provided for or used for the purpose of containing or detaining animal or other

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process wastes. Discharges from waste-retention lagoons or ponds shall not be allowed, except as authorized by a water pollution control permit.

(H) (uu) "Waste treatment facilities" means structures or devices that collect, store, stabilize, treat, or otherwise control pollutants, so that after the discharge, disposal, or land application of treated wastes, water pollution will not occur, and the public health and the waters of the state will be protected.

(vv) "Water pollution control permit" and "permit" mean an authorization, license, or equivalent control document issued by the secretary. This term shall not include any document that has not yet been the subject of final action by the secretary.

(mm) (ww) "Water quality standards" means the Kansas surface water quality standards as defined specified in K.A.R. 28-16-28b et seq through K.A.R. 28-16-28g.

(nn) (xx) "Water well" is ~~as defined~~ has the meaning specified in K.S.A. 82a-1203(f), and amendments thereto.

(oo) (yy) "Waters of the state" is ~~as defined~~ has the meaning specified in K.S.A. 65-161 (a), and amendments thereto.

(zz) "Whole pond seepage test" means a measurement of the evaporation from, and the change in water level of the waste-retention lagoon, pond, or structure, or swine waste-retention lagoon, pond, or structure using either of the following:

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(1) Any method that meets the requirements specified in "standards for measuring seepage from anaerobic lagoons and manure storages," by Jay M. Ham, Ph.D. and Tom M. DeSutter, dated 2003 and hereby adopted by reference; or

(2) any equivalent method approved by the secretary. (Authorized by K.S.A. ~~1997~~ 2005 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. ~~1997~~ Supp. 65-164, K.S.A. ~~1997~~ Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. ~~1997~~ 2005 Supp. 65-166a, K.S.A. ~~65-170, 65-170b, 65-170c, 65-170d, 65-170g,~~ 65-171a, K.S.A. ~~1997~~ 2005 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h, and L. 1998, ch. 143, sec. 2. [K.S.A. ~~1998~~ Supp. 65-1,178]; effective, E-67-5, May 31, 1967; effective Jan. 1, 1968; amended Jan. 15, 1999; amended P-\_\_\_\_\_.)

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9-28-04

Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18. ANIMAL AND RELATED WASTE CONTROL

28-18-2. Registration and application requirements. (a) Each operator entity proposing the construction, modification, or expansion of an unregistered confined feeding facility, public livestock market, collection center, or transfer station and each operator of an existing, but unregistered, confined feeding facility, public livestock market, collection center, or transfer station shall register any confined feeding submit a registration form for the facility with to the department secretary, if any of the following requirements conditions is met:

- (1) The confined feeding proposed or existing unregistered facility has an animal unit capacity of 300 or more animal units.
- (2) The department has determined that the confined feeding proposed or existing unregistered facility has presents a significant water pollution potential, as defined in K.A.R. 28-18-1.
- (3) The department has determined that the confined feeding proposed or existing unregistered facility requires is required by statute to obtain a permit from the secretary.
- (4) The operator entity proposing the construction, modification, or expansion of a confined feeding an unregistered facility not required to obtain either a permit or certification desires or the operator of an existing unregistered facility elects to register the facility in order to

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3-13-06

Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18a - ANIMAL AND RELATED WASTE CONTROL

28-18-4. Filing of applications and payment of fees. (a) ~~Applications~~ Each application shall be filed ~~consistent with the provisions and requirements in~~ according to K.A.R. 28-16-59.

(b) For the purpose of providing adequate public notice regarding a permit for any proposed new construction or proposed new expansion of a confined feeding facility, ~~the operator a public livestock market, a collection center, a transfer station, or a truck-washing facility for animal wastes, each applicant~~ shall provide to the ~~department secretary~~ the name or names and mailing address or addresses of the following:

(1) The United States post office or offices serving the immediate area of the confined feeding facility; and

(2) each owner of a habitable structure or any property located within one mile of the confined feeding facility.

(c) In addition to the application requirements of K.A.R. 28-16-59, for any new construction or new expansion of a confined feeding facility, each applicant shall submit all of the following information:

(1) A map identifying the location and layout of the confined feeding facility or the facility perimeter;

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(2) a map identifying the location of any habitable structure or city, county, state, or federal park within one mile of the confined feeding facility or the facility perimeter;

(3) a map identifying all water wells on the facility property;

(4) a map identifying any streams and bodies of surface water within one mile of the confined feeding facility or the facility perimeter;

(5) for confined feeding facilities that utilize a waste-retention lagoon or pond, any information that the applicant possesses indicating the presence of any unplugged oil, gas, or salt solution mining wells located at the proposed or existing confined feeding facility;

(6) a waste management plan for any confined feeding facility whose operator is not required to obtain a federal permit;

(7) a nutrient management plan for any confined feeding facility whose operator is required to obtain a federal permit;

(8) a groundwater monitoring plan, if required; and

(9) a closure plan for any confined feeding facility whose operator is required to obtain a federal permit and that is located over the Equus Beds.

(d) Confined feeding facilities on separate pieces of land without a contiguous ownership boundary shall be classified as separate operations, and each applicant shall be assessed a fee under K.A.R. 28-16-56d. (Authorized by K.S.A. 1997 2005 Supp. 65-171d; as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A.

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~~1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997~~  
~~2005 Supp. 65-166a, K.S.A. 1997 2005 Supp. 65-171d, as amended by L. 1998, ch. 143,~~  
~~sec. 1,~~ and K.S.A. 65-171h; effective, E-67-5, May 31, 1967; effective Jan. 1, 1968;  
amended Jan. 15, 1999; amended P- \_\_\_\_\_.)

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2-9-06

Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18. ANIMAL AND RELATED WASTE CONTROL

28-18-8. Permit; terms and conditions. (a) The terms and conditions of all permits shall be consistent with the requirements of K.A.R. 28-16-62, as appropriate.

(b) (1) Animal waste management systems shall be designed, constructed, operated, and maintained in a manner that prevents pollution of waters of the state.

(2) Each operator of an animal waste management systems system for a confined feeding facilities facility with an animal unit capacity of 1,000 or more who is required to obtain a federal permit shall be ensure that the animal waste management system is designed, constructed, operated, and maintained to prevent the discharge of animal or other process wastes to surface waters of the state. Animal or other process wastes from a waste-retention lagoon or pond or other storage structure Any operator of an animal waste management system of a confined feeding facility may be discharged discharge the following to surface waters of the state, whenever precipitation events, either chronic or catastrophic, cause an overflow of animal or other process wastes from an animal waste management system designed, constructed, operated, and maintained to contain all animal or and other process wastes, plus;

(A) Animal or other process wastes; and

(B) the direct precipitation and the runoff from a 25-year, 24-hour precipitation event

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for the location of the confined feeding facility.

(3)(A) Except as provided in paragraph (b)(3)(B), each animal waste management ~~systems~~ system for any confined feeding facilities facility ~~with an animal unit capacity of 999 or less~~ whose operator is not required to obtain a federal permit shall be designed, constructed, operated, and maintained to prevent the discharge of animal or other process wastes to surface waters of the state as required in paragraph (b)(2).

(B) Any operator of an animal waste management ~~systems~~ system for a confined feeding facilities ~~with an animal unit capacity of 999 or less~~ facility who is not required to obtain a federal permit may discharge animal or other process wastes to surface waters of the state, consistent with the requirements of K.A.R. 28-16-28b through ~~K.A.R. 28-16-28f~~ K.A.R. 28-16-28g, K.A.R. 28-16-57a, and K.A.R. 28-16-62, as appropriate, when specifically authorized by a permit.

(c) For each emergency or accidental discharge, overflow, or unplanned release of animal or other process wastes, each operator shall report the incident to the department within two hours of discovery. Each operator shall report any emergency, spill, accidental discharge, overflow, or unplanned release associated with animal or other process wastes to the department, using the telephone numbers ~~as provided by the department~~ director. Each operator shall submit a written report to the department within three days of the incident.

(d) ~~The~~ Each operator shall retain a copy of the current permit issued by the

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department secretary at the facility's site office for the facility or at a central records location.

(e) ~~The operator shall report, within 72 hours to the department, whenever the required amount of land application area utilized by the facility is not available or accessible for use by the facility for land application, utilization, or disposal purposes because of a change in property ownership, lease, or agreement with the property owner.~~

(f) The Each operator shall be responsible for advising the department within 60 days of any changes in mailing address or telephone number regarding the facility or designated facility contact.

(g) ~~(f)~~ The Each operator shall operate the facility in a manner ~~to minimize~~ that minimizes or ~~prevent~~ prevents any discharge that is in violation of the permit ~~and~~ or that has a potential to adversely affect human health or the environment.

(h) ~~(g)~~ The Each operator shall, at all times, properly operate and maintain the animal waste management system and any related appurtenances that are installed or utilized by the operator to achieve compliance with the conditions of the permit. (Authorized by K.S.A. ~~1997~~ 2005 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. ~~1997~~ 2005 Supp. 65-164, K.S.A. ~~1997~~ 2005 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. ~~1997~~ 2005 Supp. 65-166a, K.S.A. ~~1997~~ 2005 Supp. 65-171d, as amended by L. ~~1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999; amended P-~~\_\_\_\_\_.)

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9-24-04

Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18. ANIMAL AND RELATED WASTE CONTROL

28-18-9. Certification; terms and conditions. (a) Each operator shall comply with all conditions, requirements, limitations, and operating provisions stipulated in the certification.

(b) Operation of a confined feeding facility in violation of any conditions, requirements, limitations, and operating provisions of a certification, or in a manner that represents a significant water pollution potential, shall result in the revocation of the certification and issuance of a permit and any other appropriate enforcement action. If a significant water pollution potential exists as defined in K.A.R. 28-18-1, the operator shall apply for a permit. (Authorized by K.S.A. ~~1997~~ 2003 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. ~~1997~~ Supp. 65-164, K.S.A. ~~1997~~ Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. ~~1997~~ 2003 Supp. 65-166a, K.S.A. ~~1997~~ 2003 Supp. 65-171d, as amended by L. 1998, ch. ~~143~~, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999; amended P-\_\_\_\_\_.)

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Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18. - ANIMAL AND RELATED WASTE CONTROL

28-18-11. Confined feeding facilities; federal requirements. ~~(a)~~ For the purpose of issuing federal permits and administering NPDES program requirements, ~~the definition of "point source" as defined in 40 C.F.R. 122.2, as in effect on July 1, 1998, is adopted by reference; the following definitions and provisions, as in effect on July 1, 2005, are hereby adopted by reference:~~

~~(b)~~ ~~(a)~~ For the purpose of issuing federal permits and administering NPDES program requirements; The concentrated animal feeding operation exclusions defined specified in 40 C.F.R. 122.3 (e) and 40 C.F.R. 122.3 (f), ~~as in effect on July 1, 1998, are adopted by reference.;~~

~~(c)~~ ~~(b)~~ For the purpose of issuing federal permits and administering NPDES program requirements; the provisions addressing concentrated animal feeding operations defined specified in 40 C.F.R. 122.23 and appendix B to 40 C.F.R. Part 122, ~~as in effect on July 1, 1998, are adopted by reference; 40 C.F.R. 122.23(b), (c), and (e), and 122.42(e);~~

~~(d)~~ ~~(c)~~ For the purpose of issuing federal permits and administering NPDES program requirements; the provisions addressing concentrated aquatic animal feeding operations defined specified in 40 C.F.R. 122.24 and appendix C to 40 C.F.R. Part 122, ~~as in effect on July 1, 1998, are adopted by reference.; and~~

~~(e)~~ ~~(d)~~ For the purpose of issuing federal permits and administering NPDES program requirements, each operator shall comply with except for 40 C.F.R. 412.32, 412.44, and 412.46,

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the provisions addressing effluent limitations ~~as defined~~ for concentrated animal feeding operations specified in 40 C.F.R. Part 412, ~~as adopted by reference in K.A.R. 28-16-57a.~~

(Authorized by K.S.A. ~~1997~~ 2005 Supp. 65-171d, ~~as amended by L. 1998, ch. 143, sec. 1;~~  
implementing K.S.A. ~~1997 Supp.~~ 65-164, K.S.A. ~~1997 Supp.~~ 65-165, ~~as amended by L. 1998,~~  
~~ch. 62, sec. 1,~~ K.S.A. 65-166, K.S.A. ~~1997~~ 2005 Supp. 65-166a, K.S.A. ~~1997~~ 2005 Supp. 65-  
171d, ~~as amended by L. 1998, ch. 143, sec. 1;~~ and K.S.A. 65-171h; effective Jan. 15, 1999;  
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Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18. ANIMAL AND RELATED WASTE CONTROL

28-18-12. Design and construction of animal waste management systems. (a) If a confined feeding facility represents a significant water pollution potential or ~~requires~~ if the operator of a facility is required by statute or regulation to obtain a permit, as determined by the ~~department secretary~~, the operator shall provide an animal waste management system that ~~shall be~~ is designed in accordance with the minimum standards of design, construction, and maintenance and is constructed and operated in accordance with construction plans, specifications, and ~~manure~~ either a waste management plan or nutrient management plan approved by the ~~department secretary~~. If site topography, operating procedures, experience, and other available information indicate that more than the minimum standards of design, construction, and maintenance are required to effect adequate water pollution control, additional provisions may be required. ~~A summary of approved standards of design shall be available from the division:~~ Each applicant shall ensure that any new construction or new expansion of a confined feeding facility or animal waste management system meets the requirements of the "minimum standards of design, construction, and maintenance," as defined in K.A.R. 28-18-1.

(b) The operator shall not initiate operation of the new confined feeding facility or animal waste management system or the expanded portions of any existing confined feeding

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facility or animal waste management system, until after issuance of the new or modified permit by the ~~department~~ secretary. Initiation of construction before the issuance of a new or modified permit by the ~~department~~ secretary shall be deemed to be solely at the risk of the operator.

(c) For the purpose of these regulations, ~~any~~ each reference to a professional engineer or consultant shall be deemed to designate an individual offering a service for a fee for the design of a confined feeding facility or animal waste management system, exclusive of any nutrient utilization plan, ~~soils~~ soil or cropping consultations, hydrologic work involved in conducting hydrologic or geologic investigations, or in the siting, design, or construction of groundwater monitoring wells. ~~Any~~ Each reference to a professional engineer shall be deemed to designate an individual licensed to practice engineering in Kansas by the Kansas state board of technical professions.

(d) Consultants that prepare plans and specifications for the new construction or new expansion of confined feeding facilities that are submitted to ~~KDHE for approval~~ comply with statutes and regulations shall provide KDHE with ~~evidence~~ documentation that adequate general commercial liability insurance coverage addressing errors and omissions in the design plans and specifications has been obtained and is in effect.

(e) (1) Each operator shall initiate any proposed new construction or new expansion of a confined feeding facility that has been approved by the ~~department~~ secretary and for which the required permit or permit modification has been issued, within two years of after

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the date on which the permit or permit modification is ~~issued~~ effective or pursuant to the department's requirements of the permit issued by the secretary. Each operator shall complete any proposed new construction or new expansion of a confined feeding facility that has been approved by the ~~department~~ secretary and for which the required permit or permit modification is issued, within three years ~~of~~ after the date on which the permit or permit modification is ~~issued~~ effective or as required by the ~~department~~ permit issued by the secretary.

(2) Failure to initiate the approved construction or expansion within two years and to complete the approved construction or expansion within three years ~~of~~ after the ~~date of issuance~~ effective date of the permit or permit modification shall void the department's secretary's approval of the construction plans, specifications, and other associated plans. ~~In the event that~~ If phased construction is proposed, the initiation and completion of construction shall conform to the schedule stipulated ~~in~~ by the department's approval secretary.

(3) If the ~~department's~~ approval becomes void, the permit or permit modification shall remain in effect for the term of the permit, but the operator shall resubmit the construction plans, specifications, and other associated plans to the ~~department~~ secretary for review and consideration for approval before initiating the construction or expansion of a confined feeding facility.

(f) Neither the approval of construction plans, specifications, or the ~~manure~~

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management plan other required plans, nor the issuance of a permit or certification by the ~~department~~ secretary shall prohibit the ~~department~~ secretary from taking any enforcement action if the animal waste management system fails to protect the waters of the state, meet any specified effluent criteria, or comply with state surface water quality standards. In addition, ~~this~~ the secretary's approval; permit, of the plans or the secretary's issuance; of a permit or certification shall not constitute a defense by the operator regarding violation of any statute, regulation, permit condition, or requirement.

(g) A new confined feeding facility or animal waste management system shall not be built in any stream, river, lake, reservoir, or water bodies meeting the definition of jurisdictional wetlands and consistent with the definition of "surface waters" in K.A.R. 28-16-28b(ww)(3).

(h) Each operator, when directed by the ~~department~~ secretary, shall notify the ~~department~~ a minimum of two days before performing any soil sample collection activities or liner integrity testing ~~to allow opportunity for department staff to witness the activities.~~

(i) There shall be no deviation from plans and specifications submitted to and approved by the ~~department~~ secretary, unless amended plans and specifications showing the proposed changes have been submitted to the department and approved by the ~~department~~ secretary.

(j) Each construction plan shall indicate the location of any active, abandoned, or plugged water, oil, or gas, or salt solution mining well within 600 feet of any planned

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location for a waste-retention lagoon or pond. If the operator is unable to confirm the exact location of any well or wells, the construction plan shall contain a note indicating the potential for the well or wells to be located in the vicinity of any proposed waste-retention lagoon or pond. ~~Any~~ Each active, abandoned, or plugged water, oil, or gas, or salt solution mining well that is encountered during construction and that was not identified or located on the construction plan shall be reported to the department within 48 hours of discovery.

Construction activities that would impact the well or wells or that would be in the immediate vicinity of the well or wells shall be immediately terminated until the department authorizes the construction to resume secretary determines that the appropriate steps, including plugging the well, have been taken to protect public health and the environment.

(k) Following the completion of the proposed construction or proposed expansion and when requested by the secretary, each operator proposing ~~the construction of a new confined feeding facility or the expansion of an existing confined feeding facility that will utilize an animal waste management system~~ shall submit to the department a certification and, when requested, any supporting documentation, ~~acknowledging whether or not~~ shall certify that the animal waste management system was constructed in accordance with the plans and specifications approved by the department secretary. ~~The~~ If the operator utilized a professional engineer or consultant to monitor the construction of the animal waste management system, then the certification shall also be signed either by a by the professional engineer or an approved the consultant representing the operator, who monitored the

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construction or installation of the animal waste management system, including any waste-retention lagoon or pond liner. The certification shall be based on actual observations during construction and any field or laboratory data developed during or following construction.

The certification shall be maintained on-site or at a central records location and made available to the department, along with any supporting information, upon request.

(Authorized by K.S.A. ~~1997~~ 2005 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. ~~1997~~ Supp. 65-164, K.S.A. ~~1997~~ Supp. 65-165, as amended by L. ~~1998~~, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. ~~1997~~ 2005 Supp. 65-166a, K.S.A. ~~1997~~ 2005 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999; amended P-\_\_\_\_\_.)

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3-1-06

Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18. ANIMAL AND RELATED WASTE CONTROL

28-18-13. Operation of animal waste management systems. (a) ~~The~~ Each animal waste management system shall be designed, constructed, maintained, and operated to prevent pollution of waters of the state and to protect public health and the environment.

(b) Each animal waste management system shall be operated ~~consistent with waste management~~ according to the plans approved by the department secretary.

(c) When a liner is installed or constructed, the operator shall maintain the liner to comply with the minimum standards of design, construction, and maintenance. When soil liners are utilized, no trees or other deep-rooted vegetation shall be allowed to grow within 100 feet of the liner. Any mechanical or structural damage to the liner shall be reported to the department within two workdays of identification and shall be repaired in a time frame approved by the ~~department secretary and designed to protect public health and the~~ environment.

(d) Each operator shall haul or transport animal or process wastes to land application sites in a manner that prevents loss or spillage during transport.

(e) When land application of animal or other process wastes is practiced, the application shall be conducted ~~at agronomic rates~~ considering site-specific conditions to ensure the appropriate agricultural utilization of the nutrients in the animal or process

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wastes.

(f) Irrigation practices shall be managed to minimize ponding or puddling of animal or other process wastes at the land application site. Irrigation practices shall be managed to ensure that animal or other process wastes are not discharged from the application sites.

(g) Adequate equipment and land application areas shall be available for removal of animal or other process wastes and contaminated ~~stormwater~~ storm water runoff from the confined feeding facility to comply with the provisions of the permit and these regulations.

(h) (1) Unless approved in advance by the ~~department~~ secretary, liquid waste, or ~~liquid~~ concentrated liquid animal waste, or other liquid process ~~wastes~~ waste shall not be land-applied when the ground is frozen, snow-covered, or saturated, or during a precipitation event. Land application of animal or other process wastes during these periods may be authorized by the ~~department~~ secretary for use in filtering animal or other process wastes from retention structures that are properly operated and maintained and that are in imminent danger of overflow to surface waters of the state due to a chronic or catastrophic precipitation ~~events~~ event.

(2) Solid animal or other process wastes may be applied to frozen ground only if the proposed application site and practices ensure that the wastes will be retained at the application site.

(i) (1) Each operator, as ~~directed~~ required by the ~~department~~ facility permit issued by

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the secretary, shall conduct sampling and analysis of animal or process wastes or sites utilized for the application of animal or process wastes from confined animal feeding facilities, to determine nutrient and salinity levels, to confirm utilization of the animal or process wastes at agronomic rates, and to ~~protect soil and water resources~~ ensure that public health and the environment are protected.

(2) (A) Each operator of a confined feeding facility not required to obtain a federal permit shall sample the soil of each field identified in the waste management plan for the confined feeding facility if both of the following conditions are met:

(i) The field is identified by KDHE as located in a sensitive groundwater area or over the Equus Beds.

(ii) The field has received manure or wastewater in one or more of the previous five years.

(B) The sampling and analysis shall be conducted in accordance with the procedures approved by the secretary. The test results shall be sent to the department within 30 days of receipt of the test results.

(3) Each operator required to obtain a federal permit shall conduct soil and waste sampling and analysis in accordance with the nutrient management plan. (Authorized by K.S.A. 1997 2005 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec.

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~~1, K.S.A. 65-166, K.S.A. 1997 2005 Supp. 65-166a, K.S.A. 1997 2005 Supp. 65-171d, as~~  
amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999; amended

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Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18. - ANIMAL AND RELATED WASTE CONTROL

28-18-14. Inspections. (a) Each operator shall provide all necessary specialized equipment, clothing, or appurtenances to enable a department inspector to enter the facility for inspection.

(b) ~~Each operator that utilizes bio-security protocols for the confined feeding facility and that requests KDHE conformance with the protocols shall submit a copy of the bio-security protocols to the department by September 1, 1999.~~

(c) ~~Any~~ Each operator that develops or modifies ~~bio-security~~ biosecurity protocols and that requests KDHE conformance with the protocols shall submit a copy of the protocols to the department within 30 days of establishing or modifying the biosecurity protocols.

(d)(c) Bio-security Biosecurity protocols shall not inhibit restrict the reasonable access to of any department inspector. If any department employee conducting an inspection of a confined feeding facility complies with the facility's ~~bio-security~~ biosecurity protocol, that employee shall be allowed to access the animal waste management system to conduct inspections. (Authorized by K.S.A. 1997 2003 Supp. 65-171d, ~~as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 2003 Supp. 65-166a, K.S.A. 1997 2003 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999; amended~~

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Kansas Department of Health and Environment  
Proposed New Regulation  
Article 18. ANIMAL AND RELATED WASTE CONTROL

28-18-16. Waste-retention lagoon or pond closure requirements. (a) Each operator of a confined feeding facility permitted by the department shall notify the department of any plans to cease operation of, close, or abandon the waste-retention lagoon or pond.

(b) Each operator shall maintain and comply with a valid water pollution control permit for the facility until closure of the waste-retention lagoon or pond is complete and all materials representing a threat to public health and the environment are removed.

(c) Each operator of a confined feeding facility that is located over the Equus Beds who is required to obtain a federal permit and who proposes the new construction or expansion of a waste-retention lagoon or pond shall develop and implement a waste-retention lagoon or pond closure plan. The operator shall submit the closure plan with the permit application to the department for consideration for approval. When submitting waste-retention lagoon or pond closure plans, each operator shall submit four copies of the plan.

(d) Each operator of a confined feeding facility required to obtain a federal permit shall develop and implement a waste-retention lagoon or pond closure plan if all of the following conditions are met:

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- (1) The waste-retention lagoon or pond is located over the Equus Beds.
- (2) The operator is applying for the renewal of the permit after the effective date of this regulation.
- (3) The operator does not have an approved waste-retention lagoon or pond closure plan. The operator shall submit the closure plan with the permit renewal application to KDHE. When submitting a waste-retention lagoon or pond closure plan, each operator shall submit four copies of the plan.

(e) Each waste-retention lagoon or pond closure plan shall include at a minimum the following information:

- (1) A description of all animal waste management system components utilized to contain, control, or store process wastes at the facility;
- (2) a description of the procedures to be employed to remove and dispose of animal or other process wastes;
- (3) a description of the maintenance, deactivation, conversion, or demolition of all waste-retention lagoons or ponds or the closure of any waste-retention lagoon or pond by one of the following methods:
  - (A) Removing the berms, and leveling and revegetating the site to provide erosion control;
  - (B) leaving the structure or structures in place for use as a freshwater farm pond or reservoir;
  - (C) retaining the structure or structures for future use as a part of an animal waste



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management system; or

(D) using any other method approved by the secretary that will be protective of the environment and will meet all statutory and regulatory requirements; and

(4) a description of, and detailed drawings for, the plugging of any water or groundwater monitoring wells at the confined feeding facility.

(f) Each operator of a confined feeding facility required to have a waste-retention lagoon or pond closure plan shall amend and submit the amended plan to the department for approval whenever specifically directed by the secretary or whenever warranted by one or more of the following:

(1) Any significant changes in operation of the facility;

(2) any significant change or modification in the animal waste management system;

or

(3) any other significant conditions affecting the facility or the animal waste management system.

(g) Each operator of a confined feeding facility required to develop a waste-retention lagoon or pond closure plan shall retain the current plan at the site office of the facility or at a central records location, in a manner that is accessible to inspection by representatives of the department.

(h) The closure of a waste-retention lagoon or pond shall be completed within six months of either of the following:

(1) Notification to the department of the proposed closure of the waste-retention

lagoon or pond; or

(2) termination of operations for any confined feeding facility whose operator is required to develop and implement a waste-retention lagoon or pond closure plan.

(i) Each operator seeking an extension of time for closure shall submit a written request to the secretary. The request shall detail the reasons for the extension. Only weather conditions or the legal change in ownership of the confined feeding facility shall be grounds for the secretary to consider an extension.

(j) If the operator of a confined feeding facility is unwilling or unable to properly close the waste-retention lagoon or pond, the owner of the facility and the property owner shall be responsible for closing the waste-retention lagoon or pond in accordance with these regulations and in a manner that protects the waters of the state, public health, and the environment. (Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective P-\_\_\_\_\_.)

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Kansas Department of Health and Environment  
Proposed New Regulation  
Article 18. ANIMAL AND RELATED WASTE CONTROL

28-18-17. Groundwater protection requirements for waste-retention lagoons or ponds and waste treatment facilities. (a) The provisions of this article shall not apply to any permitted waste-retention lagoon or pond or waste treatment facility that is in existence or that the secretary approved for construction before the effective date of this regulation, unless information becomes available showing that the waste-retention lagoon or pond or the waste treatment facility presents an imminent threat to public health or the environment.

(b)(1) The provisions of this article shall not apply to any existing or proposed waste-retention lagoon or pond or waste treatment facility located at a confined feeding facility if all of the following conditions are met:

(A) The confined feeding facility existed on July 1, 1994.

(B) The operator registered the confined feeding facility with the secretary before July 1, 1996.

(C) The capacity of the existing or proposed waste-retention lagoon or pond or waste treatment facility is no larger than that necessary to serve the facility as described in the registration application submitted before July 1, 1996.


(D) The separation distance from the bottom of the existing or proposed waste-retention lagoon or pond or waste treatment facility to groundwater is less than 10 feet.

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(2) Each operator of a confined feeding facility meeting the requirements of paragraph (b)(1) of this regulation and proposing to use a waste-retention lagoon or pond or waste treatment facility shall propose site-specific groundwater protection measures for the secretary's consideration for approval.

(c) Each new or expanded portion of a waste-retention lagoon or pond or waste treatment facility other than those described in subsections (a) and (b) shall be located a minimum of 10 feet above the static groundwater level, as measured from the lowest elevation of the finished interior grade of the waste-retention lagoon or pond or the waste treatment facility. Each operator of or permit applicant for a confined feeding facility shall notify the department at least two days before performing any site investigations to determine the static groundwater level at the site.

(d) Each operator or permit applicant shall ensure that each liner for a new or expanded portion of a waste-retention lagoon or pond or waste treatment facility meets the following requirements:

(1) If the new or expanded portion of the waste-retention lagoon or pond or waste treatment facility is not located over the Equus Beds or in a sensitive groundwater area, the materials used for the liner shall have a seepage rate of no more than 1/4 inch per day.


(2) If the new or expanded portion of the waste-retention lagoon or pond or waste treatment facility is located in a sensitive groundwater area, the materials used for the liner

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shall have a seepage rate of no more than 1/10 inch per day.

(3) If the new or expanded portion of the waste-retention lagoon or pond or waste treatment facility is located over the Equus Beds, either an impermeable synthetic membrane liner shall be used or the material used for the liner shall consist of either of the following:

(A) Two or more layers of compacted soil designed to have a seepage rate of no more than 1/10 inch per day. To demonstrate that this seepage requirement is met, the soil liner seepage rate shall be determined within 12 months of placing the waste-retention lagoon or pond or waste treatment facility into operation. The test method used shall be the whole pond seepage test; or

(B) any material that has been approved through the variance process in accordance with K.A.R. 28-18-15.

(e) Each permit applicant or operator that conducts testing to determine the seepage rate shall submit four copies of the test results to the department.

(f) For the purpose of K.A.R. 28-18-1 through K.A.R. 28-18-17, an imminent threat to public health or the environment may be deemed to exist if physical, chemical, biological, or radiological substances or a combination of these substances is released into subsurface waters of the state and results in a concentration or amount of a substance in excess of the numerical criteria designated for aquatic life protection, agricultural use, or public health protection as provided in the "Kansas surface water quality standards: table of numeric

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criteria,” dated December 6, 2004, which is adopted by reference in K.A.R. 28-16-28e. If the background concentration of a substance is naturally occurring and is greater than the numerical criterion, the background concentration shall be considered the criterion.

(Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, 65-165, 65-166, K.S.A. 2005 Supp. 65-166a, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective P-

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Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18a. SWINE AND RELATED WASTE CONTROL

28-18a-1. Definitions. The following words, terms, phrases, and abbreviations shall have the following meanings, unless otherwise defined in an individual regulation or unless a different meaning of a word is clear from the context in which it is used. Words, Terms, phrases, and abbreviations not provided in the regulations of this article shall have the meaning defined meanings specified in K.S.A. 65-101 et seq. and amendments thereto; ~~K.A.R. 28-5-1 et seq., K.A.R. 28-16-1 et seq., K.A.R. 28-18-1 et seq., K.A.R. 28-30-1 et seq., articles 5, 16, 18, and 30;~~ or the clean water act (CWA). ~~When~~ If the same word is defined both in Kansas statutes or the regulations of this article and in any federal regulation adopted by reference in these regulations or in state regulations referenced in this article; and the definitions are not identical, the definition prescribed in Kansas statutes or the regulations of this article shall control.

(a) "Agronomic application for swine wastes rates" is as defined has the meaning specified in K.S.A. 1997-Supp. 2-3302 (k), as amended by L. 1998, ch. 143, sec. 23, and amendments thereto, and is regulated by the secretary of the Kansas department of agriculture.

(b) "Animal unit" is as defined has the meaning specified in K.S.A. 1997-Supp. 65-171d (c)(3), as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.

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(c) "Animal unit capacity" ~~is as defined~~ has the meaning specified in K.S.A. 1997 Supp. 65-171d(c)(4), ~~as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.~~

(d) "Best available technology for swine facilities" ~~is as defined~~ has the meaning specified in L. 1998, ch. 143, sec. 2 K.S.A. 65-1,178, and amendments thereto ~~[K.S.A. 1998 Supp. 65-1,178 (b), and amendments thereto].~~

(e) "Best management practices for swine facilities" ~~is as defined~~ has the meaning specified in L. 1998, ch. 143, sec. 2 K.S.A. 65-1,178, and amendments thereto ~~[K.S.A. 1998 Supp. 65-1,178 (c), and amendments thereto].~~

(f) "Certification" means a document; issued by the secretary in lieu of a water pollution control permit, ~~from the department~~ indicating that the facility meets department requirements applicable animal waste management statutes and regulations and does not represent a significant water pollution potential.

(g) "Change in operation" ~~or and~~ "modification" ~~means~~ mean any of the following:

(1) Expansion or enlargement of a facility beyond the scope or boundaries established by registration, permit, certification, or approved plans and specifications;

(2) any increase in the animal unit capacity beyond that authorized by a permit or certification; or

(3) a change in construction or operation of a ~~confined feeding~~ swine facility that ~~may affect~~ affects the collecting, storage, handling, treatment, utilization, or disposal of

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swine or other process wastes.

(h) "Clean water act" or and "CWA" means ~~public law 92-500, as amended by public law 95-217, public law 95-576, public law 96-483, and public law 97-117, and mean the federal water pollution control act, 33 U.S.C. 1251 et seq., as in effect on February 4, 1987~~ November 27, 2002.

(i) "Confined feeding facility" is ~~as defined~~ has the meaning specified in K.S.A. ~~1997 Supp. 65-171d(c)(2), as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.~~

(j) "Dead swine handling plan" means a written document that identifies the procedures by which the operator of a swine facility shall handle dead swine, to minimize the potential for the generation of nuisance, environmental, or public health threats.

(k) "Department" or and "KDHE" means mean the Kansas department of health and environment.

(l) "Director" means the director of the division of environment of the Kansas department of health and environment.

(m) "Division" means the division of environment, Kansas department of health and environment.

(n) "Emergency response plan for swine" means a written document that identifies the following procedures to be implemented by the operator of a swine facility ~~in the event~~

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of if an emergency occurs:

(1) Actions to contain or manage an unauthorized discharge, spill, or release of swine or other process wastes;

(2) notification of the department; and

(3) any actions required to mitigate the adverse effects of an emergency.

(o) "Entity," for the purposes of these regulations, means a person, individual, association, company, corporation, institution, group of individuals, joint venture, partnership, or federal, state, county, or municipal agency or department.

(p) "Environmental protection agency" or and "EPA" means mean the United States environmental protection agency.

(q) "Equus Beds," for the purposes of these regulations, means an aquifer underlying the sections of land listed in the following table:

<u>County</u>	<u>Range</u>	<u>Township</u>	<u>Section</u>
<u>Harvey</u>	<u>01W</u>	<u>22S</u>	<u>06, 07, 18, 19, 30, 31</u>
<u>Harvey</u>	<u>01W</u>	<u>23S</u>	<u>06, 07, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30,</u> <u>31, 32, 33, 34</u>
<u>Harvey</u>	<u>01W</u>	<u>24S</u>	<u>03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18,</u> <u>19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34</u>
<u>Harvey</u>	<u>02W</u>	<u>22S</u>	<u>All sections</u>
<u>Harvey</u>	<u>02W</u>	<u>23S</u>	<u>All sections</u>
<u>Harvey</u>	<u>02W</u>	<u>24S</u>	<u>All sections</u>
<u>Harvey</u>	<u>03W</u>	<u>22S</u>	<u>All sections</u>
<u>Harvey</u>	<u>03W</u>	<u>23S</u>	<u>All sections</u>


<u>County</u>	<u>Range</u>	<u>Township</u>	<u>Section</u>
<u>Harvey</u>	<u>03W</u>	<u>24S</u>	<u>All sections</u>
<u>McPherson</u>	<u>01W</u>	<u>19S</u>	<u>31, 32, 33, 34, 35</u>
<u>McPherson</u>	<u>01W</u>	<u>20S</u>	<u>02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 14, 15,</u> <u>16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31,</u> <u>32, 33</u>
<u>McPherson</u>	<u>01W</u>	<u>21S</u>	<u>05, 06, 07, 18, 19, 30, 31</u>
<u>McPherson</u>	<u>02W</u>	<u>21S</u>	<u>12, 13, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,</u> <u>27, 28, 29, 30, 31, 32, 33, 34, 35, 36</u>
<u>McPherson</u>	<u>03W</u>	<u>18S</u>	<u>28, 29, 30, 31, 32, 33</u>
<u>McPherson</u>	<u>03W</u>	<u>19S</u>	<u>04, 05, 06, 07, 08, 09, 15, 16, 17, 18, 19, 20,</u> <u>21, 22, 27, 28, 29, 30, 31, 32, 33, 34</u>
<u>McPherson</u>	<u>03W</u>	<u>20S</u>	<u>03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18,</u> <u>19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34,</u> <u>35</u>
<u>McPherson</u>	<u>03W</u>	<u>21S</u>	<u>02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 13, 14,</u> <u>15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26,</u> <u>27, 28, 29, 30, 31, 32, 33, 34, 35, 36</u>
<u>McPherson</u>	<u>04W</u>	<u>18S</u>	<u>20, 21, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36</u>
<u>McPherson</u>	<u>04W</u>	<u>19S</u>	<u>01, 02, 03, 04, 09, 10, 11, 12, 13, 14, 15, 22,</u> <u>23, 24, 25, 26, 27, 34, 35, 36</u>

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<u>County</u>	<u>Range</u>	<u>Township</u>	<u>Section</u>
<u>McPherson</u>	<u>04W</u>	<u>20S</u>	<u>01, 02, 03, 10, 11, 12, 13, 14, 15, 16, 21, 22,</u> <u>23, 24, 25, 26, 27, 28, 33, 34, 35, 36</u>
<u>McPherson</u>	<u>04W</u>	<u>21S</u>	<u>01, 02, 03, 10, 11, 12, 13, 14, 15, 22, 23, 24,</u> <u>25, 26, 27, 34, 35, 36</u>
<u>Reno</u>	<u>04W</u>	<u>22S</u>	<u>All sections</u>
<u>Reno</u>	<u>04W</u>	<u>23S</u>	<u>All sections</u>
<u>Reno</u>	<u>04W</u>	<u>24S</u>	<u>All sections</u>
<u>Reno</u>	<u>04W</u>	<u>25S</u>	<u>All sections</u>
<u>Reno</u>	<u>04W</u>	<u>26S</u>	<u>All sections</u>
<u>Reno</u>	<u>05W</u>	<u>22S</u>	<u>All sections</u>
<u>Reno</u>	<u>05W</u>	<u>23S</u>	<u>All sections</u>
<u>Reno</u>	<u>05W</u>	<u>24S</u>	<u>All sections</u>
<u>Reno</u>	<u>05W</u>	<u>25S</u>	<u>All sections</u>
<u>Reno</u>	<u>05W</u>	<u>26S</u>	<u>All sections</u>
<u>Reno</u>	<u>06W</u>	<u>22S</u>	<u>All sections</u>
<u>Reno</u>	<u>06W</u>	<u>23S</u>	<u>All sections</u>
<u>Reno</u>	<u>06W</u>	<u>24S</u>	<u>All sections</u>
<u>Reno</u>	<u>06W</u>	<u>25S</u>	<u>All sections</u>
<u>Reno</u>	<u>06W</u>	<u>26S</u>	<u>All sections</u>
<u>Reno</u>	<u>07W</u>	<u>22S</u>	<u>All sections</u>

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<u>County</u>	<u>Range</u>	<u>Township</u>	<u>Section</u>
<u>Reno</u>	<u>07W</u>	<u>23S</u>	<u>All sections</u>
<u>Reno</u>	<u>07W</u>	<u>24S</u>	<u>All sections</u>
<u>Reno</u>	<u>07W</u>	<u>25S</u>	<u>All sections</u>
<u>Reno</u>	<u>07W</u>	<u>26S</u>	<u>All sections</u>
<u>Sedgwick</u>	<u>01E</u>	<u>26S</u>	<u>06, 07, 08, 17, 18, 19, 20</u>
<u>Sedgwick</u>	<u>01W</u>	<u>25S</u>	<u>03, 04, 05, 06, 07, 08, 09, 10, 15, 16, 17, 18,</u> <u>19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32,</u> <u>33, 34, 35, 36</u>
<u>Sedgwick</u>	<u>01W</u>	<u>26S</u>	<u>01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12,</u> <u>13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,</u> <u>27, 28, 29, 30, 31, 32</u>
<u>Sedgwick</u>	<u>01W</u>	<u>27S</u>	<u>05, 06</u>
<u>Sedgwick</u>	<u>02W</u>	<u>25S</u>	<u>All sections</u>
<u>Sedgwick</u>	<u>02W</u>	<u>26S</u>	<u>01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12,</u> <u>13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,</u> <u>25, 26, 27, 34, 35, 36</u>
<u>Sedgwick</u>	<u>02W</u>	<u>27S</u>	<u>01</u>
<u>Sedgwick</u>	<u>03W</u>	<u>25S</u>	<u>01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12,</u> <u>13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25,</u> <u>26, 27, 28, 29, 33, 34, 35, 36</u>

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<u>County</u>	<u>Range</u>	<u>Township</u>	<u>Section</u>
<u>Sedgwick</u>	<u>03W</u>	<u>26S</u>	<u>01, 02, 03, 04, 11, 12</u>

~~(p) (r)~~ “Existing swine facility” ~~is as defined~~ has the meaning specified in L-1998, ch. 143, sec. 2 K.S.A. 65-1,178, and amendments thereto [K.S.A. 1998 Supp. 65-1,178 (c), and amendments thereto].

~~(q) (s)~~ “Federal permit,” or “national pollutant discharge elimination system permit,” or and “NPDES permit” ~~means~~ mean an authorization, license, or equivalent control document issued by the EPA or an approved state to implement the requirements of 40 C.F.R. Parts 122, 123, 124, and 412.

~~(r) (t)~~ “Food animals” means swine produced for consumption.

~~(s) (u)~~ “Fur animals” means swine raised for its the skin, pelt, or hair.

~~(t) (v)~~ “Groundwater,” ~~means~~, as used in this article, means water located under the surface of the land that is or can be the source of supply for wells, springs, ~~or~~ seeps, or streams, or that is held in aquifers. For the purposes of this article, groundwater shall be considered capable of being a source of supply for wells if at least one of the following conditions is met:

(1) The groundwater can be produced at a rate of 10 gallons or more per hour from a borehole with a diameter of nine or fewer inches. In determining the groundwater production rate for an excavation, borehole, or existing water or monitoring well, the

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quantity of produced water shall be adjusted for comparison purposes to the surface area of a borehole with a diameter of nine inches.

(2) The groundwater is currently being used within ½ mile of the proposed lagoon, regardless of the rate at which water can be produced.

(3) There is evidence of past groundwater use within ½ mile of the proposed lagoon.

~~(u)~~ (w) "Habitable structure" is as defined has the meaning specified in K.S.A. 1997 Supp. 65-171d (c)(5), as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.

~~(v)~~ (x) "Impermeable synthetic membrane liner" means, ~~for a swine waste retention lagoon or pond, a liner with a maximum seepage rate of 1/8 inch per day or less a~~ commercially manufactured membrane liner composed of synthetic materials commonly identified as being plastic, plastic polymer, or other synthetic materials that, when installed, provide for the more stringent of either of the following:

(1) A maximum monitored or calculated seepage rate of 1/64 inch per day; or

(2) the liner manufacturer's criteria for the maximum monitored or calculated seepage rate for the installed membrane liner, expressed in units of volume per unit area per unit of time (gallons per square foot per day).


~~(w)~~ (y) "Land application" means the distribution of swine or other process wastes onto, or incorporation into, the soil mantle for the purpose of disposal or utilization by crops or vegetation.

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~~(x)~~ (z) "Liner" means any designed barrier in the form of in situ, layer, membrane, or blanket materials utilized or installed to reduce the potential for a significant hydrologic connection between swine or other process wastes that are controlled or retained by swine waste management systems and waters of the state.

~~(y)~~ (aa) "Manure management plan for swine" means a written document that identifies the procedures by which the operator of a swine facility shall operate, manage, and maintain a swine waste management system. This plan shall describe the methods for the handling and either disposal or utilization of all swine or other process wastes generated by the swine facility.

(z) (bb) "Maximum soil liner seepage rate" ~~or and~~ "specific discharge" means mean the flow rate of water through the liner of a swine waste-retention lagoon or pond and is shall be expressed as velocity (distance/time). The maximum seepage rate shall be calculated as  $v = k(h/d)$ , in which "k" is the hydraulic conductivity (coefficient of permeability) and "(h/d)" is the hydraulic gradient. The hydraulic gradient is the maximum vertical distance "h" measured from the liquid surface to the liner bottom divided by the thickness of the soil liner "d." When calculating the maximum seepage rate, the maximum operating design depth, not considering design freeboard, shall be used.

~~(aa)~~ (cc) "Minimum standards of design, construction, and maintenance" means the following:

(1) Effluent standards and limitations;

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(2) other performance standards for treatment or utilization; and  
(3) other standards of design, construction, and maintenance for confined feeding facilities or swine pollution control systems published by the department KDHE.

~~(bb)~~ (dd) "Monitoring" means all procedures using any of the following methods:

(1) Either systematic inspection or collection and analysis of data on the operational parameters of a swine ~~feeding facility or its pollution controls~~ swine pollution control system; or

(2) the systematic collection and analysis of data on the quality of the swine or other process wastes, groundwater, surface water, or soils on or in the vicinity of the ~~swine feeding facility or areas utilized for land application of the swine or other process wastes~~ swine facility or swine pollution control system.

~~(cc)~~ (ee) "National pollutant discharge elimination system" ~~or and~~ "NPDES" means mean the national system for the issuance of permits under 42 33 U.S.C. section 1342, and ~~includes~~ shall include any state or interstate program that has been approved by the EPA administrator, in whole or in part, pursuant to 42 33 U.S.C. section 1342.

(ff) "Nutrient management plan" means a written document that identifies the practices and procedures that the operator of a swine facility that is required to obtain a federal permit plans to use to operate and maintain the swine waste management and pollution control system and to manage the handling, storage, utilization, and disposal of wastes generated by the swine facility.

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~~(dd)~~ (gg) "Nutrient utilization plan for swine" means a written document, on a form prescribed by the secretary of the Kansas department of agriculture, addressing site-specific conditions for the land application of manure, wastewater, and other nutrient sources from swine facilities, at agronomic application rates.

~~(ee)~~ (hh) "Odor control plan for swine" means a written document for swine facilities that ~~summarizes~~ describes site-specific and facility-specific design considerations, operational activities and procedures, maintenance activities and procedures, and management practices to be employed to minimize the potential for or limit odors from a swine facility, swine waste management, or swine pollution control system.

~~(ff)~~ (ii) "Oil or gas well" shall have the meaning of assigned to the term "well" as defined in K.S.A. 1997-Supp. 55-150(i), and amendments thereto.

~~(gg)~~ (jj) "Pleasure animals," as used in this article, means swine that are not produced for consumption or their skin, pelts, or hair.

~~(hh)~~ (kk) "Point source" ~~is as defined~~ has the meaning specified in K.A.R. 28-16-28b ~~(mm)~~.

~~(ii)~~ (ll) "Pollution" ~~is as defined~~ has the meaning specified in K.S.A. 1997-Supp. 65-171d ~~(c)(1)~~, as amended by L. 1998, ch. 143, sec. 1, and amendments thereto.

~~(jj)~~ (mm) "Precipitation runoff" means the rainwater or the meltwater that is derived from snow, hail, sleet, or other forms of atmospheric precipitation and that flows by gravity over the surface of the land.

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~~(kk)~~ (nn) (1) "Process wastes" means any of the following:

- (A) Excrement from swine, wastewater, or swine carcasses;
- (B) precipitation that comes into contact with any manure, litter, bedding, or other material used in or resulting from the production of swine;
- (C) spillage or overflow from watering systems;
- (D) wastes from washing, cleaning, or flushing pens, barns, manure pits, equipment, trucks, trailers, or other associated swine facilities;
- (E) wastes from washing swine or spraying swine for cooling;
- (F) wastes from dust control;
- (G) boiler blowdown and water softener regenerate wastes;
- (H) precipitation runoff from confinement, loading, and unloading areas;
- (I) spillage of feed or, swine wastes, or any other process wastes described in this regulation;
- (J) discharges from land application fields that occur during application;
- (K) precipitation runoff from land application fields, if liquid or ~~liquid~~ concentrated liquid wastes are applied during frozen, snow-covered, or saturated soil conditions without approval by the department;
- (L) raw, intermediate, or finished materials associated with wastes or contaminated ~~stormwater~~ storm water runoff from swine waste or dead swine composting operations; or
- (M) flows or runoff from waste storage areas.

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(2) Process wastes shall not include swine wastes spilled by trucks transporting livestock on city, township, county, state, or federal streets, roads, or highways.

(oo) "Public livestock market" has the meaning specified in K.S.A. 47-1001, and amendments thereto. For the purposes of these regulations, this term shall include public livestock markets where federal veterinary inspections are regularly conducted.

~~(H)~~ (pp) "Registration" means any required fee and the properly completed and executed documents designated by the division and any additional required documents or information necessary for determining the need for a water pollution control permit.

(qq) "Salt solution mining well" has the meaning specified in K.S.A. 55-1,120, and amendments thereto.

~~(mm)~~ (rr) "Secretary" means the secretary of the Kansas department of health and environment.

(ss)(1) "Sensitive groundwater areas," for the purpose of these regulations, means aquifers generally comprised of alluvial aquifers, the area within the boundaries of the Equus Beds groundwater management district no. 2 (GMD #2), and the dune sand area located south of the great bend of the Arkansas River. Each sensitive groundwater area shall be any section of land listed in "Kansas sensitive groundwater areas for wastewater lagoons," prepared by KDHE and dated January 1, 2005, which is adopted by reference in K.A.R. 28-16-160.

(2) Any operator proposing a new swine waste-retention lagoon or pond or

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expansion of an existing swine waste-retention lagoon or pond may request that the director make a site-specific sensitive groundwater area determination. The request shall be made in writing to the director. The request shall contain supporting data and information and an explanation of why the area in question should not be considered to be a sensitive groundwater area, for the purpose of these regulations.

~~(nn)~~ (tt) "Sewage" is as defined has the meaning specified in K.S.A. 1997-Supp. 65-164 ~~(b)~~, and amendments thereto.

~~(oo)~~ (uu) "Significant water pollution potential" means any of the following, as determined by the secretary:

- (1) A swine feeding operation that utilizes structures designed and constructed to collect, control the flow of, and direct swine or other process wastes, tanks, manure pits, or other structures designed and constructed to collect or store swine or other process wastes, waste-retention lagoons or ponds, waste treatment facility or facilities, or a swine waste management system;
- (2) lots, pens, or concentrated feeding areas ~~located~~ with creeks, streams, intermittent waterways, or any other conveying channel or device that has the potential to carry pollutants to waters of the state running through or proximate to ~~them~~ the lots, pens, or concentrated feeding areas;

- (3) any operation that cannot retain or control swine or other process wastes on the operator's facility or property, or adjacent property without the owner's permission; or

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(4) a swine feeding operation determined to practice improper collection, handling, or disposal of swine or other process wastes that have the potential to degrade or impair the quality of any waters of the state.

(pp) (vv) "Surface waters," ~~is~~; for water quality purposes, ~~as defined~~ has the meaning specified in K.A.R. 28-16-28b (ww).

(qq) (ww) "Suspend" or and "suspension," ~~means~~; as used in this article, mean, respectively, to abrogate temporarily and the temporary abrogation of a water pollution control permit or certification issued to a swine facility.

(rr) (xx) "Swine facility" ~~is as defined~~ has the meaning specified in ~~L. 1998, ch. 143, sec. 2, and amendments thereto~~ [K.S.A. 1998 Supp. 65-1,178, and amendments thereto].

(ss) (yy) "Swine facility closure plan" means a written document that identifies the practices and procedures that the operator of a swine facility is required to follow when closing the facility to protect public health and safety and the environment, and to prevent the escape of swine or other process wastes from the facility.

(tt) (zz) "Swine operator" means an individual, association, company, corporation, municipality, group of individuals, joint venture, partnership, a state or federal agency or department, or any business owning, leasing, or having charge or control of one or more swine facilities.

(uu) (aaa) "Swine pollution control system" means any land, structures, or practices utilized for the collection, containment, storage, distribution, land application, or disposal of

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swine or other process wastes generated by ~~confined feeding~~ swine facility operations. ~~A~~  
~~swine pollution control system includes the following~~ This term shall include any of the  
following:

(1) Site grading to divert extraneous, uncontaminated precipitation runoff around the  
~~confined feeding~~ swine facility;

(2) structures designed and constructed to collect, control the flow of, and direct  
swine or other process wastes;

(3) vegetation cover utilized for controlling erosion or for filtering swine or other  
process wastes;

(4) tanks, manure pits, or other structures designed and constructed to collect or  
store swine or other process wastes;

(5) waste-retention lagoons or ponds;

(6) land used for the application, utilization, or disposal of swine or other process  
wastes; and

(7) waste treatment facilities.

~~(vv)~~ (bbb) "Swine waste management system" is as defined in ~~L. 1998, ch. 143, sec.~~  
~~2, and amendments thereto [K.S.A. 1998 Supp. 65, 1,178 (k); and amendments thereto].~~

~~(ww)~~ (ccc) "Swine waste-retention lagoon or pond" is as defined has the meaning  
specified in L. 1998, ch. 143, sec. 2, amendments thereto [K.S.A. 1998 Supp. 65-1,178 (t),  
and amendments thereto].

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(xx) (ddd) "Variance" means the ~~department's~~ secretary's written approval or permit authorizing a proposed action that knowingly results in a lack of conformity with one or more provisions of these regulations or the minimum standards of design, construction, and maintenance. ~~Any~~ Each variance ~~approved by the department~~ authorized by secretary shall be deemed to ~~adequately~~ protect public health and the environment and to comply with the ~~general~~ intent of these regulations and with federal NPDES permit requirements.

(eee) "Waste management plan" means a written document that identifies the practices and procedures that the operator of a swine facility not required to obtain a federal permit plans to use to operate and maintain the swine waste management and pollution control system and to manage the handling, storage, utilization, and disposal of wastes generated by the swine facility.

(yy) (fff) "Waste-retention lagoon or pond" means excavated or diked structures, or natural depressions provided for or used for the purpose of containing or detaining swine or other process wastes. Discharges from waste-retention lagoons or ponds shall not be allowed, except as authorized by a water pollution control permit.

(zz) (ggg) "Waste treatment facilities" means structures or devices that collect, store, stabilize, treat, or otherwise control pollutants, so that after the discharge, disposal, or land application of treated wastes, water pollution will not occur, and ~~the~~ public health and the waters of the state will be protected.

(aaa) (hhh) "Water pollution control permit" ~~means~~ and "permit" ~~mean~~ an

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authorization, license, or equivalent control document issued by the department. ~~A permit secretary. This term~~ shall not include any document that has not yet been the subject of final action by the department, ~~including a draft or proposed permit secretary.~~

~~(bbb)~~ (iii) "Water quality standards" means the Kansas surface water quality standards as ~~defined~~ specified in K.A.R. 28-16-28b ~~et seq~~ through K.A.R. 28-16-28g.

~~(ccc)~~ (jii) "Water well" ~~is as defined~~ has the meaning specified in K.S.A. 82a-1203~~(f)~~, and amendments thereto.

~~(ddd)~~ (kkk) "Waters of the state" ~~is as defined~~ has the meaning specified in K.S.A. 65-161 ~~(a)~~, and amendments thereto.

(III) "Whole pond seepage test" means a measurement of the evaporation from, and the change in water level of the waste-retention lagoon, pond, or structure, or swine waste-retention lagoon, pond, or structure using either of the following:

(1) Any method that meets the requirements specified in "standards for measuring seepage from anaerobic lagoons and manure storages," which is adopted by reference in K.A.R. 28-18-1; or

(2) any equivalent method approved by the secretary.

~~(ccc)~~ (mmm) "Wildlife refuge" ~~is as defined~~ has the meaning specified in K.S.A. ~~1997 Supp. 65-171d (c)(6), as amended by L. 1998, ch. 143, sec. 1, and amendments thereto. (Authorized by K.S.A. 1997 2005 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended~~

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by ~~L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 2005 Supp. 65-166a, K.S.A. 65-170,~~  
~~65-170b, 65-170c, 65-170d, 65-170g, 65-171a, K.S.A. 1997 2005 Supp. 65-171d, as~~  
~~amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, secs. 2, 3, 4, 5,~~  
~~6, 7, 8, 11, 12, 13 and 17 [K.S.A. 1998 Supp. 65-1,178, 65-1,179, 65-1,180, 65-1,181, 65-~~  
~~1,182, 65-1,183, 65-1,184, 65-1,187, 65-1,189, 65-1,190 and 65-1,188]; effective Jan. 15,~~  
1999; amended P-\_\_\_\_\_.)

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9-29-04

Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18a. SWINE AND RELATED WASTE CONTROL

28-18a-2. Registration and application requirements. (a) Each ~~swine operator~~ entity proposing the construction, modification, or expansion of an unregistered swine facility, public livestock market, collection center, or transfer station, and each swine operator of an existing unregistered swine facility, public livestock market, collection center, or transfer station shall ~~register any confined feeding~~ submit a registration form for the facility with to the department secretary, if any of the following ~~requirements~~ conditions is met:

(1) The ~~confined feeding~~ proposed or existing unregistered facility has an animal unit capacity of 300 or more animal units.

(2) The ~~department has determined that the confined feeding~~ proposed or existing unregistered facility ~~has~~ presents a significant water pollution potential as defined in K.A.R. 28-18a-1.

(3) The ~~department has determined that the confined feeding~~ facility requires ~~entity or swine operator is required by statute to obtain a permit for the facility.~~

(4) The ~~swine operator of a confined feeding facility not required to obtain either a permit or certification desires~~ entity or swine operator elects to register the facility in order to obtain either a permit or certification, even though there is no requirement to obtain a permit or certification.

(b) Each registration ~~submitted form that any entity or swine operator submits to the~~ department secretary shall be accompanied by **ATTORNEY GENERAL**

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(c) ~~Each swine operator entity proposing the construction, modification, or expansion of a swine facility, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes and each swine operator of an unpermitted swine facility, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes shall submit to the department a water pollution control permit application for a confined feeding~~ the facility meeting to the secretary if any of the following criteria conditions is met:

(1) ~~Each confined feeding~~ The proposed or existing unpermitted facility, regardless of size, determined by the secretary to present presents a significant water pollution potential; as defined in K.A.R. 28-18a-1.

(2) ~~each confined feeding facility that has an animal unit capacity of 300 or more and that the department has determined represents a significant water pollution potential; The entity or swine operator is required by statute to obtain a permit.~~

(3) ~~each confined feeding facility with an animal unit capacity of 1,000 or more; regardless of water pollution potential;~~

(4) ~~each proposed construction, expansion, modification, or change in operation of an existing permitted confined feeding facility;~~

(5) ~~each proposed construction, expansion, modification, or change in operation of an existing certified confined feeding facility, where the department determines that the proposed~~

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~~construction, expansion, modification, or change in operation represents a significant water pollution potential;~~

~~(6) each sale barn, collection center, or transfer station that has an average weekly capacity of more than 300 animal units or that is utilized more frequently than once per week or is determined to be a significant water pollution potential;~~

~~(7) each livestock truck wash facility. For the purpose of these regulations, only those facilities that wash trucks utilized for the purpose of transporting livestock shall be included; or~~

~~(8) each swine operator of a swine feeding operation that~~ The entity or swine operator proposing the construction, modification, or expansion of the facility or the swine operator of a facility that is not required to obtain a permit ~~elects to obtain a permit.~~

~~(d) Each application submitted that any entity or swine operator submits to the department secretary shall be accompanied by the annual permit fee or the difference between the fee for the original permitted capacity and that for the expanded permitted capacity; required pursuant to K.A.R. 28-16-56c et seq 28-16-56d.~~

~~(e) Each entity or swine operator proposing the construction, modification, or expansion of a swine facility and each swine operator of a confined feeding an unpermitted swine facility that has an animal unit capacity of 1,000 animal units or more, or for which the department determines a federal permit that is required by statute or regulation to obtain a federal permit shall apply to the department secretary for a federal permit.~~

~~(f)(1) Each swine operator or entity proposing either the construction of a new swine~~

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~~facility, modification, or the expansion of an existing swine facility that has an animal unit capacity of 300 or more shall submit a registration or application to the department before initiating construction or operation of a swine facility, swine waste management system, or swine pollution control system:~~

~~(2) Whenever the department determines that a permit or permit modification is required, the swine operator that is required to submit a registration form or apply for a permit shall not initiate construction until the department approves swine operator or entity has obtained either of the following:~~

~~(A) The secretary's written approval of the application, construction plans, specifications, and manure waste management plan for swine, for each facility or system that the entity or swine operator proposes to be constructed, modified, or expanded; or~~

~~(B) a certification, issued by the secretary, for each facility or system that the entity or swine operator proposes to be constructed, modified, or expanded.~~

~~(2) Initiation of Each swine operator or entity that is proposing the construction, modification, or expansion of a swine facility, swine waste management system, or swine pollution control system required to have a permit and that undertakes the construction, modification, or expansion before the issuance of a new or modified permit by the department secretary shall be deemed to be undertaking the construction solely at the risk of the operator swine operator or entity.~~

~~(3) The Before each swine operator shall not initiate or entity proposing the construction,~~

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modification, or expansion of a swine facility, swine waste management system, swine pollution control system, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes that is required to have a permit or certification begins the operation of the new, modified, or expanded portion of a swine facility, swine waste management system, swine pollution control system, public livestock market, collection center, transfer station, or the expanded portions of an existing swine truck-washing facility, swine waste management system, or swine pollution control system, until after the issuance of for animal wastes, the swine operator or entity shall obtain a new or modified permit or certification issued by the department secretary.

(4) The Before each swine operator shall not initiate or entity proposing the construction, modification, or expansion of a swine facility, swine waste management system, swine pollution control system, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes that is required to have a permit or certification begins the stocking of a new swine facility, modified, or the expanded portion of an existing swine facility, swine waste management system, swine pollution control system, public livestock market, collection center, transfer station, or truck-washing facility for animal wastes at levels above the animal unit capacity authorized for in the swine facility current permit or certification, until after issuance of the swine operator or entity shall obtain a new or modified permit or certification issued by the department secretary.

(5) The swine operator shall not initiate the construction and operation of a swine facility for which the department has determined no permit is required, until after issuance of a

certification by the department. (Authorized by K.S.A. ~~1997~~ 2003 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. ~~1997~~ Supp. 65-164, K.S.A. ~~1997~~ Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. ~~1997~~ 2003 Supp. 65-166a, K.S.A. ~~1997~~ 2003 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, sec. 3 [K.S.A. ~~1998~~ Supp. 65-1,179]; effective Jan. 15, 1999; amended

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Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18a - SWINE AND RELATED WASTE CONTROL

28-18a-4. Filing of applications and payment of fees. (a) ~~Applications~~ Each application shall be filed ~~consistent with the provisions and requirements in~~ according to K.A.R. 28-16-59 or ~~L. 1998, ch. 143, sec. 2 [K.S.A. 1998 Supp. 65-1,178]~~ and amendments thereto, as applicable.

(b) For the purpose of providing adequate public notice regarding a permit for any proposed new construction or proposed new expansion of a ~~confined feeding~~ swine facility, the swine operator shall provide to the ~~department~~ secretary the name or names and mailing address or addresses of the following:

(1) The United States post office or offices serving the immediate area of the ~~confined feeding~~ swine facility; and

(2) each owner of a habitable structure or any property located ~~within one mile of the confined feeding facility, or for swine within one mile of the~~ swine facility perimeter, as described by K.S.A. 65-171d, ~~as amended by L. 1998, ch. 143, sec. 1,~~ and amendments thereto.

(c) In addition to the application requirements of K.A.R. 28-16-59, for any new construction or new expansion of a swine facility, a each swine operator applicant shall submit the following information:

(1) A map identifying the location and layout of the ~~confined feeding~~ swine facility or the facility perimeter;

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(2) a map identifying the location of any habitable structure or city, county, state, or federal park within one mile of the ~~confined feeding~~ swine facility or the facility perimeter;

(3) a map identifying the location of a any wildlife refuge within 16,000 feet of the ~~confined feeding~~ swine facility or the facility perimeter;

(4) a map identifying all water wells on the swine facility property;

(5) a map identifying any streams and bodies of surface water within one mile of the ~~confined feeding~~ swine facility or the facility perimeter;

(6) for swine facilities that utilize a swine waste-retention lagoon or pond, ~~the swine operator shall provide to the department any information that the operator may possess~~ applicant possesses indicating the presence of any unplugged oil, ~~or gas, or salt solution mining~~ wells located at the proposed or existing swine facility;

(7) a waste management plan, for any swine facility whose operator is not required to obtain a federal permit;

~~(7)~~ (8) for swine facilities with an animal unit capacity of 1,000 animal units or more where the swine at the facility are not owned by the operator at ~~of~~ the facility, a copy of the executed contract between the facility operator and owner of the swine, specifying responsibility for management of the manure and wastewater generated at the facility; and

~~(8)~~ (9) for swine facilities with an animal unit capacity of 1,000 animal units or more, the following plans information:

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- (A) A manure management plan;
- (B) a nutrient utilization plan that meets the requirements of the Kansas department of agriculture, for a if the facility that applies manure or wastewater to land, as required by the secretary of the Kansas department of agriculture;
- (C) an emergency response plan;
- (D) an odor control plan; and
- (E) a dead swine handling plan; and
- (F) a nutrient management plan;
- (G) a groundwater monitoring plan, if required;
- (H) a closure plan, if required; and
- (9) (I) for swine facilities with an animal unit capacity of 3,725 animal units or more, a facility closure plan financial assurance for closure of the swine facility and closure of the swine waste-retention lagoons or ponds.

(d) Swine facilities on separate pieces of land without a contiguous ownership boundary shall be classified as separate operations, and each applicant shall be assessed a fee under K.A.R. 28-16-56d. (Authorized by K.S.A. 1997 2005 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 2005 Supp. 65-166a, K.S.A. 1997 2005 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998,

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~~ch. 143, secs. 3, 5, 8, 11, 12, 13, and 17 [K.S.A. 1998 Supp. 65-1,179, 65-1,181, 65-1,184, 65-~~  
~~1,187, 65-1,188, 65-1,189, and 65-1,190 and 65-1,188]~~; effective Jan. 15, 1999; amended

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3-2-06

Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18a - SWINE AND RELATED WASTE CONTROL

28-18a-8. Permit; terms and conditions. (a) The terms and conditions of all permits shall be consistent with the requirements of K.A.R. 28-16-62, as appropriate.

(b) (1) Swine waste management and pollution control systems shall be designed, constructed, operated, and maintained in a manner that prevents pollution of waters of the state.

(2) Each operator of a swine waste management and pollution control systems system for confined feeding facilities a swine facility with an animal unit capacity of 1,000 or more shall be ensure that the swine waste management and pollution control system is designed, constructed, operated, and maintained to prevent the discharge of swine or other process wastes to surface waters of the state. Swine or other process wastes from a waste retention lagoon or pond or other storage structure Any operator of a swine waste management and pollution control system may be discharged discharge the following to surface waters of the state, whenever precipitation events, either chronic or catastrophic, cause an overflow of swine or other process wastes from a swine waste management or pollution control system designed, constructed, operated, and maintained to contain all swine or and other process wastes; plus;

(A) Swine or other process wastes; and

(B) the direct precipitation and the runoff from a 25-year, 24-hour precipitation event for the location of the confined feeding swine facility.

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(3)(A) Except as provided in paragraph (b)(3)(B), each swine waste management and pollution control ~~systems~~ system for ~~confined feeding facilities~~ any swine facility with an animal unit capacity of 999 or less shall be designed, constructed, operated, and maintained to prevent the discharge of swine or other process wastes to surface waters of the state as required in paragraph (b)(2).

(B) Any operator of a swine waste management and pollution control ~~systems~~ system for ~~confined feeding facilities~~ a swine facility with an animal unit capacity of 999 or less may discharge swine waste or other process wastes to surface waters of the state, consistent with the requirements of K.A.R. 28-16-28b through ~~K.A.R. 28-16-28f~~ K.A.R. 28-16-28g, K.A.R. 28-16-57a, and K.A.R. 28-16-62, as appropriate, when specifically authorized by a permit.

(c) For each emergency or accidental discharge, overflow, or unplanned release of swine or other process wastes, each swine operator shall report the incident to the department within two hours of discovery. Each operator shall report any emergency, spill, accidental discharge, overflow, or unplanned release associated with swine or other process wastes to the ~~department~~ director, using the telephone numbers as provided by the department. Each operator shall submit a written report to the department within three days of the incident.

(d) ~~The~~ Each swine operator shall retain a copy of the current permit issued by the ~~department~~ secretary at the ~~facility's site office~~ for the facility or at a central records location.

~~(e) The swine operator shall report, within 72 hours to the department, whenever the~~

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~~required amount of land application area utilized by the facility is not available or accessible for use by the facility for land application, utilization, or disposal purposes because of a change in property ownership, lease, or agreement with the property owners.~~

~~(f)~~ (e) The Each swine operator shall be responsible for advising the department secretary within 60 days of any changes in mailing address or telephone number regarding the facility or designated facility contact.

~~(g)~~ (f) The Each swine operator shall operate the facility in a manner to minimize or prevent any discharge that is in violation of the permit ~~and~~ or that has a potential to adversely affect human health or the environment.

~~(h)~~ (g) The Each swine operator shall, at all times, properly operate and maintain the swine waste management and pollution control system and any related appurtenances that are installed or utilized by the swine operator to achieve compliance with the conditions of the permit.

~~(i) The operator of a swine facility with an animal unit capacity of 1,000 or more shall comply with the manure management plan, emergency response plan, odor control plan, and dead swine handling plan as approved by the department. The swine operator shall amend these plans whenever warranted by changes in the swine facility or in other conditions affecting the facility, as established pursuant to L. 1998, ch. 143, secs. 5, 8, 11, and 17, and amendments thereto [K.S.A. 1998 Supp. 65-1,181, 65-1,184, 65-1,187 and 65-1,188, and amendments~~

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(j) (h) The Each operator of a swine facility with an animal unit capacity of 1,000 or more shall notify the department whenever the swine operator does not own all the swine at the swine facility, pursuant to ~~L. 1998, ch. 143, sec. 5, and amendments thereto~~ [K.S.A. 1998 Supp. 65-1,181, and amendments thereto].

(k) (i) The Each operator of a swine facility with an animal unit capacity of 1,000 or more shall notify the department before the operator sells or gives manure or wastewater to a person that is not employed by the swine facility and whenever disposal is by means other than land application on areas covered by the swine facility's approved nutrient utilization plan for the swine facility. When the approved manure management plan for the swine facility addresses the requirements in ~~L. 1998, ch. 143, sec. 5, and amendments thereto~~ [K.S.A. 1998 Supp. 65-1,181; and amendments thereto], notification to the department shall not be required.

(l) (j) The Each operator of a swine facility with an animal unit capacity of 1,000 or more who land applies manure or wastewater shall comply with the nutrient utilization plan approved by the Kansas department of agriculture, pursuant to ~~L. 1998, ch. 143, sec. 6, and amendments thereto~~ [K.S.A. 1998 Supp. 65-1,182, and amendments thereto].

(m) (k) The Each operator of a swine facility with an animal unit capacity of 1,000 or more who land applies manure or wastewater and is required to develop or amend and to implement a nutrient utilization plan, as prescribed by the secretary of the Kansas department


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of agriculture, shall file the plan and any amendments to the plan with KDHE.

(n) ~~(l)~~ The Each operator of a swine facility ~~with an animal unit capacity of 3,725 or more required to develop a swine facility closure plan or a swine waste-retention lagoon or pond closure plan, or both,~~ shall comply with ~~the swine facility closure~~ each plan, as approved by the department secretary. The operator shall amend ~~the facility closure~~ each plan whenever warranted by changes in the facility or in other conditions affecting the facility, pursuant to ~~L. 1998, ch. 143, sec. 12, and amendments thereto [K.S.A. 1998 Supp. 65-1,189, and amendments thereto].~~

~~(o)~~ (m) Each swine facility that is required to be permitted by the department, ~~with and that has~~ an animal unit capacity of 1,000 or more; shall be staffed by a department-certified operator or an operator in training. (Authorized by K.S.A. ~~1997~~ 2005 Supp. 65-171d, as amended by ~~L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 5 [K.S.A. 1998 Supp. 65-1,181, 65-1,183, and 65-1,184 ]~~; implementing K.S.A. ~~1997~~ Supp. 65-164, ~~K.S.A. 1997~~ Supp. 65-165, as amended by ~~L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997~~ 2005 Supp. 65-166a, K.S.A. ~~1997~~ 2005 Supp. 65-171d, as amended by ~~L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, secs. 5, 6, 7, 8, 9, and 17 [K.S.A. 1998 Supp. 65-1,181, 65-1,182, 65-1,183, 65-1,184, 65-1,185 and 65-1,188]~~; effective Jan. 15, 1999; amended P - \_\_\_\_\_.)

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11-29-04

Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18a - SWINE AND RELATED WASTE CONTROL

28-18a-9. Certification; terms and conditions. (a) Each swine operator shall comply with all conditions, requirements, limitations, and operating provisions stipulated in the certification.

(b) Operation of a ~~confined feeding~~ swine facility in violation of any conditions, requirements, limitations, and operating provisions of a certification, or in a manner that represents a significant water pollution potential, shall result in the revocation of the certification ~~and issuance of a permit and any other appropriate enforcement action.~~ If a significant water pollution potential exists, as defined in K.A.R. 28-18-1, the swine operator shall apply for a permit. (Authorized by K.S.A. ~~1997~~ 2003 Supp. 65-171d; ~~as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, and K.S.A. 1997~~ 2003 Supp. 65-171d; ~~as amended by L. 1998, ch. 143, sec. 1, and K.S.A. 65-171h; effective Jan. 15, 1999; amended~~ P- \_\_\_\_\_.)

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Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18a. SWINE AND RELATED WASTE CONTROL

28-18a-11. Confined feeding facilities; federal requirements. ~~(a) For the purpose of issuing federal permits and administering NPDES program requirements, the definition of "point source" as defined in 40 C.F.R. 122.2, as in effect on July 1, 1998, is adopted by reference.~~  
the following definitions and provisions, as in effect on July 1, 2005, are hereby adopted by reference:

~~(b) (a) For the purpose of issuing federal permits and administering NPDES program requirements, The concentrated animal feeding operation exclusions defined specified in 40 C.F.R. 122.3 (e) and 40 C.F.R. 122.3 (f), as in effect on July 1, 1998, are adopted by reference.;~~

~~(c) (b) For the purpose of issuing federal permits and administering NPDES program requirements, the provisions addressing concentrated animal feeding operations defined specified in 40 C.F.R. 122.23 and appendix B to 40 C.F.R. Part 122, as in effect on July 1, 1998, are adopted by reference, 40 C.F.R. 122.23(b), (c), and (e), and 122.42(e);~~

~~(d) (c) For the purpose of issuing federal permits and administering NPDES program requirements, each swine operator shall comply with the provisions addressing effluent limitations as defined in 40 C.F.R. Part 412, as adopted by reference in K.A.R. 28-16-57a except for 40 C.F.R. 412.32, 412.44, and 412.46, the provisions addressing effluent~~

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limitations for concentrated animal feeding operations specified in 40 C.F.R. Part 412.

(Authorized by K.S.A. ~~1997~~ 2005 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. ~~1997~~ Supp. 65-164, K.S.A. ~~1997~~ Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1; K.S.A. ~~65-166~~; K.S.A. ~~1997~~ 2005 Supp. 65-166a, K.S.A. ~~1997~~ 2005 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and K.S.A. ~~65-171h~~; effective Jan. 15, 1999; amended P- \_\_\_\_\_.)

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Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18a - SWINE AND RELATED WASTE CONTROL

28-18a-12. Design and construction of swine waste management and swine pollution control systems. (a) If a ~~confined feeding facility~~ swine facility represents a significant water pollution potential or ~~requires if the swine operator of the swine facility is required by statute or regulation to obtain a permit, as determined by the department secretary, the swine operator shall provide a swine waste management or pollution control system that shall be is~~ designed in accordance with the minimum standards of design, construction, and maintenance and is constructed and operated in accordance with construction plans, specifications, and ~~manure management plan~~ either a waste management plan or nutrient management plan approved by the department secretary. If site topography, operating procedures, experience, and other available information indicate that more than the minimum standards of design, construction, and maintenance are required to effect adequate water pollution control, additional provisions may be required. ~~A summary of approved standards of design shall be available from the division~~ Each applicant shall ensure that any new construction or new expansion of a swine facility, swine waste management system, or swine pollution control system meets the requirements of the "minimum standard of design, construction, and maintenance," as defined in K.A.R. 28-18a-1.

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(b) The swine operator shall not initiate operation of the ~~any new confined feeding facility~~ swine facility, new swine waste management system, or new swine pollution control system, or expanded portions of any existing swine facility, existing swine waste management system, or existing swine pollution control system, until after issuance of the new or modified permit by the ~~department~~ secretary. Initiation of construction before the issuance of a new or modified permit by the secretary shall be deemed to be solely at the risk of the swine operator.

(c) For the purpose of these regulations, ~~any~~ each reference to a professional engineer or consultant shall be deemed to designate an individual offering a service for a fee for the design of a ~~confined feeding~~ swine facility, swine waste management system, or swine pollution control system, exclusive of the nutrient utilization plan, ~~soils~~ soil or cropping consultations, hydrologic work involved in conducting hydrologic or geologic investigations, or in the siting, design, or construction of groundwater monitoring wells. ~~Any~~ Each reference to a professional engineer shall be deemed to designate an individual licensed to practice engineering in Kansas by the Kansas state board of technical professions.

(d) Consultants that prepare plans and specifications for the new construction or new expansion of ~~confined feeding~~ swine facilities that are submitted to ~~KDHE for approval~~ comply with statutes and regulations shall provide KDHE with ~~evidence~~ documentation that

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adequate general commercial liability insurance coverage addressing errors and omissions in the design plans and specifications has been obtained and is in effect.

(e) (1) Each operator shall initiate any proposed new construction or new expansion of a ~~confined feeding~~ swine facility that has been approved by the ~~department~~ secretary and for which the required permit or permit modification has been issued, within two years of after the date on which the permit or permit modification is issued effective or pursuant to the ~~department's~~ requirements of the permit issued by the secretary. Each operator shall complete any proposed new construction or new expansion of a ~~confined feeding~~ swine facility that has been approved by the ~~department~~ secretary and for which the required permit or permit modification is issued, within three years of after the date on which the permit or permit modification is issued effective or as required by the ~~department~~ permit issued by the secretary.

(2) Failure to initiate the approved construction or expansion within two years and to complete the approved construction or expansion within three years of after the date of issuance effective date of the permit or permit modification shall void the ~~department's~~ secretary's approval of the construction plans, specifications, and other associated plans. ~~In the event that~~ If phased construction is proposed, the initiation and completion of construction shall conform to the schedule stipulated ~~in by~~ the ~~department's~~ approval secretary.

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(3) If the department's approval becomes void, the permit or permit modification shall remain in effect for the term of the permit, but the operator shall resubmit the construction plans, specifications, and other associated plans to the department secretary for review and consideration for approval before initiating the construction or expansion of a ~~confined feeding~~ the swine facility.

(f) Neither the approval of construction plans, specifications, or ~~the manure management plan~~ other required plans, nor the issuance of a permit or certification by the department secretary shall prohibit the department secretary from taking any enforcement action if the swine waste management or pollution control system fails to protect the waters of the state, meet any specified effluent criteria, or comply with state surface water quality standards. In addition, ~~this~~ the secretary's approval, permit of the plans or the secretary's issuance, of a permit or certification shall not constitute a defense by the operator regarding violation of any statute, regulation, permit condition, or requirement.

(g) A new ~~confined feeding~~ swine facility, swine waste management system, or swine pollution control system shall not be built in any stream, river, lake, reservoir, or water bodies meeting the definition of jurisdictional wetlands and consistent with the definition of "surface waters" in K.A.R. 28-16-28b(ww)(3).

(h) Each operator, when directed by the department secretary, shall notify the department a minimum of two days before performing any soil sample collection activities

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or liner integrity testing to ~~allow opportunity for department staff to witness the activities.~~

(i) There shall be no deviation from plans and specifications submitted to and approved by the ~~department~~ secretary, unless amended plans and specifications showing proposed changes have been submitted to the department and approved by the ~~department~~ secretary.

(j) Each construction plan shall indicate the location of any active, abandoned, or plugged water, oil, ~~or gas, or salt solution mining~~ well within 600 feet of any planned location for a swine waste-retention lagoon or pond. If the operator is unable to confirm the exact location of any well or wells, the construction plan shall contain a note indicating the potential for the well or wells to be located in the vicinity of any proposed swine waste-retention lagoon or pond. ~~Any~~ Each active, abandoned, or plugged water, oil, ~~or gas, or salt solution mining~~ well that is encountered during construction and that was not identified or located on the construction plan shall be reported to the department within 48 hours of discovery. Construction activities that would impact the well or wells or that would be in the immediate vicinity of the well or wells shall be immediately terminated until the ~~department authorizes the construction to resume~~ secretary determines that the appropriate steps, including plugging the well, have been taken to protect public health and the environment.

(k) Following the completion of the proposed construction or proposed expansion, if

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requested by the secretary, each swine operator ~~proposing the construction of a new swine facility or the expansion of an existing swine facility that will utilize a swine waste management or pollution control system~~ shall submit to the department a certification and, ~~when requested, any supporting documentation acknowledging whether or not~~ shall certify that the swine waste management and system or swine pollution control system was , or both, were constructed in accordance with the plans and specifications approved by the department secretary. ~~The~~ If the swine operator utilized a professional engineer or consultant to monitor the construction of the swine waste management system or swine pollution control system, or both, then the certification shall also be signed either by a by the professional engineer or an approved the consultant representing the operator, who monitored the construction or installation of the swine waste management and pollution control each system, including any swine waste-retention lagoon or pond liner. The certification shall be based on actual observations during construction and any field or laboratory data developed during or following construction. The certification shall be maintained on-site or at a central records location and shall be made available to the department, along with any supporting information, upon request. (Authorized by K.S.A. ~~1997~~ 2005 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 5 [K.S.A. ~~1998~~ Supp. 65-1,181]; implementing K.S.A. ~~1997~~ Supp. 65-164, K.S.A. ~~1997~~ Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. ~~1997~~ Supp. 65-

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~~166a~~, K.S.A. ~~1997~~ 2005 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. ~~65-~~  
~~171h~~, and L. 1998 ch. 143, sec. 5 [K.S.A. ~~1998~~ Supp. 65-1,181]; effective Jan. 15, 1999;  
amended P - \_\_\_\_\_.)

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Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18a. SWINE AND RELATED WASTE CONTROL

28-18a-19. Operation of swine waste management and swine pollution control systems. (a)  
The Each swine waste management system and swine pollution control systems system shall  
be designed, constructed, maintained, and operated to prevent pollution of waters of the state  
and to protect public health and the environment.

(b) Each swine waste management system and each swine pollution control system  
shall be operated ~~consistent with waste management~~ according to the plans approved by the  
department secretary.

(c) When a liner is installed or constructed, the operator shall maintain the liner to  
comply with the minimum standards of design, construction, and maintenance. When soil  
liners are utilized, no trees or other deep-rooted vegetation shall be allowed to grow within  
100 feet of the liner. Any mechanical or structural damage to the liner shall be reported to  
the department within two workdays of identification and shall be repaired in a time frame  
approved by the ~~department~~ secretary and designed to protect public health and the  
environment.

(d) Each operator shall haul or transport swine or process wastes to land application  
sites in a manner that prevents loss or spillage during transport.

(e) When land application of swine or other process wastes is practiced, the  
application shall be conducted at agronomic rates.

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(f) Irrigation practices shall be managed to minimize ponding or puddling of swine or other process wastes at the land application site. Irrigation practices shall be managed to ensure that swine or other process wastes are not discharged from the application sites.

(g) Adequate equipment and land application areas shall be available for removal of swine or other process wastes and contaminated ~~stormwater~~ storm water runoff from the ~~confined feeding swine~~ swine facility to comply with the provisions of the permit and these regulations.

(h) (1) Unless approved in advance by the ~~department~~ secretary, liquid waste, or liquid concentrated liquid swine waste, or other liquid process ~~wastes~~ waste shall not be land applied when the ground is frozen, snow-covered, or saturated, or during a precipitation event. Land application of swine or other process wastes during these periods may be authorized by the ~~department~~ secretary for use in filtering swine or other process wastes from retention structures that are properly operated and maintained and that are in imminent danger of overflow to surface waters of the state due to a chronic or catastrophic precipitation events event.

(2) Solid swine or other process wastes may be applied to frozen ground only if the proposed application site and practices ensure that the wastes will be retained at the application site.

(i) (1) Each swine operator, as required by the ~~department~~ facility permit issued by the secretary, shall conduct sampling and analysis of swine or process wastes or sites

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utilized for the application of swine or process wastes from confined swine feeding facilities, to determine nutrient and salinity levels, to confirm utilization of the swine or process wastes at agronomic rates, and to ~~protect soil and water resources~~ ensure that public health and the environment are protected.

(2) (A) Each swine operator of a swine facility with 999 animal units or less shall sample the soil of each field identified in the waste management plan for the swine facility if both of the following conditions are met:

(i) The field is identified by KDHE as located in a sensitive groundwater area or over the Equus Beds.

(ii) The field has received manure or wastewater in one or more of the previous five years.

(B) The sampling and analysis shall be conducted in accordance with the procedures approved by the secretary. The test results shall be sent to the department within 30 days of receipt of the test results.

(3) Each swine operator required to obtain a federal permit shall conduct soil and waste sampling and analysis in accordance with the nutrient management plan. (Authorized by K.S.A. 1997 2005 Supp. 65-171d, ~~as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 2005 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, sec. 5~~ [K.S.A.

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1998 Supp. 65-1,181}; effective Jan. 15, 1999; amended P-\_\_\_\_\_.)

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Kansas Department of Health and Environment  
Proposed Amended Regulation

Article 18a. SWINE AND RELATED WASTE CONTROL

28-18a-21. Inspections. (a) Each swine operator shall provide all necessary specialized equipment, clothing, or appurtenances to enable a department inspector to enter the facility for inspection.

(b) ~~Each swine operator that utilizes bio-security protocols for the confined feeding facility and that requests KDHE conformance with the protocols shall submit a copy of the bio-security protocol to the department by September 1, 1999.~~

(c) ~~Any~~ Each swine operator that develops or modifies the ~~bio-security~~ biosecurity protocols and that requests KDHE conformance with the protocols shall submit a copy of the protocols to the department within 30 days of establishing or modifying the biosecurity protocols.

(d)(c) ~~Bio-security~~ Biosecurity protocols shall not ~~inhibit~~ restrict the reasonable access to of any department inspector. If any department employee conducting an inspection of a confined feeding facility complies with the facility's ~~bio-security~~ biosecurity protocol, that employee shall be allowed to access the animal waste management system to conduct inspections. (Authorized by K.S.A. ~~1997~~ 2003 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1; implementing K.S.A. ~~1997~~ Supp. 65-164, K.S.A. ~~1997~~ Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. ~~65-166~~, K.S.A. ~~1997~~ Supp. 65-166a, K.S.A. ~~1997~~ 2003 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. ~~65-171h~~, and L. 1998, ch. 143, sec. 14 [K.S.A. ~~1998~~ Supp. 65-1,191]; effective Jan. 15, 1999; amended P- \_\_\_\_\_.)

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Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18a. SWINE AND RELATED WASTE CONTROL

28-18a-22. Swine facility closure requirements. (a) Each swine operator of a swine facility permitted by the department shall notify the department of any plans to cease operation of, close, or abandon the swine facility.

(b) Each swine operator shall maintain and comply with a valid water pollution control permit for the swine facility until the department approves the closure of the swine facility is complete and all materials representing a threat to public health and the environment are removed.

(c)(1) ~~A swine facility closure plan shall be developed and implemented~~ Each permit applicant for any each proposed new swine facility; or new swine waste-retention lagoon or pond, proposed expansion of an existing swine facility, ~~or existing swine facility with an animal unit capacity of 3,725 or more, pursuant to L. 1998, ch. 143, sec. 12, and amendments thereto [K.S.A. 1998 Supp. 65-1,189, and amendments thereto].~~ When submitting swine facility closure plans to the department for approval, each swine operator shall submit at least four copies of the plan: or proposed expansion of an existing swine waste-retention lagoon or pond shall develop and implement a swine facility closure plan or swine waste-retention lagoon or pond closure plan if either of the following conditions is met:

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(A) (i) The new swine facility or expanded swine facility is proposed to have an animal unit capacity of 1,000 or more; and

(ii) the swine facility is proposed to be located over the Equus Beds; or

(B) The new swine facility, existing swine facility, or proposed expanded swine facility will have an animal unit capacity of 3,725 or more.

(2) Each swine operator of any existing swine facility or swine waste-retention lagoon or pond without a current swine facility or swine waste-retention lagoon or pond closure plan shall develop and implement a closure plan for the swine facility or swine waste-retention lagoon or pond if both of the following conditions are met:

(A) The existing swine facility has an animal unit capacity of 1,000 or more.

(B) The existing swine facility is located over the Equus Beds.

The swine facility or swine waste-retention lagoon or pond closure plan shall be developed and submitted to the department with the next application for permit renewal or modification for the existing swine facility.

(d) When submitting a swine facility or swine waste-retention lagoon or pond closure plan to the department, each swine operator shall submit at least four copies of the plan.

(d) (e) A swine facility or swine waste-retention lagoon or pond closure plan for any swine facility with an animal unit capacity of 3,725 or more shall include, at a minimum,

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the following:

- (1) ~~Identification of any~~ A description of all swine waste management and swine pollution control system components utilized to contain, control, or store swine or other process wastes at the swine facility;
- (2) a description of the procedures to be employed to remove and dispose of swine or other process wastes;
- (3) a description of the maintenance, deactivation, conversion, or demolition of a all swine waste-retention ~~lagoon lagoons~~ or ~~pond ponds~~ at the swine facility pursuant to ~~E. 1998, ch. 143, sec. 13, and amendments thereto [K.S.A. 1998 Supp. 65-1,190, and amendments thereto]~~, or the closure of any swine waste-retention lagoon or pond by one of the following methods:
  - (A) Removing the berms, and leveling and revegetating the site to provide erosion control;
  - (B) leaving the structure or structures in place for use as a freshwater farm pond or reservoir;
  - (C) retaining the structure or structures for future use as a part of a swine waste management or pollution control system; or
  - (D) using any other method approved by ~~KDHE~~ the secretary; and
- (4) a description of, and detailed drawings for, the plugging of any water or groundwater monitoring wells at the swine facility.

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~~(e)~~ (f) Any Each swine operator of a swine facility with an animal unit capacity of 3,725 or more required to have a swine facility closure plan and a swine waste-retention lagoon or pond closure plan shall amend ~~the swine facility closure~~ each plan and submit the plan amended plans to the department for approval whenever specifically directed by the department secretary or whenever warranted by one or more of the following:

- (1) Any significant changes in operation of the swine facility;
- (2) a any significant change or modification in the swine waste management and or swine pollution control systems; or
- (3) any other significant conditions affecting the swine facility, swine waste management system, or swine pollution control system.

~~(f)~~ (g) Each operator of a swine facility with an animal unit capacity of 3,725 or more that is required to develop a swine facility or swine waste-retention lagoon or pond closure plan shall retain the current plan at the facility's site office and of the facility or at a central records location, in a manner that is accessible to inspection by representatives of the department.

~~(g)~~ (h) The closure of a swine facility or swine waste-retention lagoon or pond shall be completed within six months of notification to the department of the proposed closure of the facility or termination of operations ~~for any facility with an animal unit capacity of 3,725 or more.~~

~~(h)~~ (i) Any Each swine operator seeking an extension of time for closure shall be

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~~requested in writing and the~~ submit a written request to the secretary. The request shall  
detail the reasons for the requested extension. Only ~~consideration of weather conditions and~~  
or the legal change in ownership of the swine facility shall be grounds for the department's  
consideration in secretary to consider granting an extension.

(~~h~~) (j) If the operator of a swine facility is unwilling or unable to properly close out  
the swine facility, the owner of swine at the swine facility and the property owner shall be  
responsible for closing out the swine facility in accordance with these regulations and in a  
manner that protects the waters of the state, public health, and the environment. (Authorized  
by K.S.A. ~~1997~~ 2005 Supp. 65-171d, ~~as amended by L. 1998, ch. 143, sec. 1;~~ implementing  
K.S.A. ~~1997~~ Supp. 65-164, K.S.A. ~~1997~~ Supp. 65-165, ~~as amended by L. 1998, ch. 62, sec.~~  
~~1,~~ K.S.A. 65-166, K.S.A. ~~1997~~ Supp. 65-166a, K.S.A. ~~1997~~ 2005 Supp. 65-171d, as  
~~amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, secs. 12 and 13~~  
~~{K.S.A. 1998 Supp. 65-1,189 and 65-1,190}; effective Jan. 15, 1999; amended~~  
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11-29-04

Kansas Department of Health and Environment  
Proposed Amended Regulation  
Article 18a - SWINE AND RELATED WASTE CONTROL

28-18a-26. Requirements for swine facility operator certification. Each operator of a swine facility with an animal unit capacity of 1,000 or more that is required to have a permit shall obtain a swine waste management and swine pollution control system operator certificate. ~~Each existing swine operator required to obtain an operator certificate shall register with the department before March 1, 1999 and shall acquire an operator certificate before September 1, 1999.~~ Any Each swine operator that desires or is required to obtain a swine facility operator certificate shall meet the following requirements:

(a) Each applicant shall be a swine facility operator who maintains or supervises a swine waste management or swine pollution control system.

(b) Each swine facility operator shall submit a complete application and the appropriate fee to the department. The application shall be received by the department at least two weeks before the scheduled examination date. Late applications shall not be accepted for the scheduled examination date.

(c) If an applicant provides false information on an application, the applicant shall not be accepted for examination, and the fee submitted with the application shall not be returned to the applicant. The applicant shall be notified of the decision denying acceptance for examination

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and shall not be allowed to take the examination for two consecutive years. (Authorized by ~~K.S.A. 65-4512~~; K.S.A. 1997 2003 Supp. 65-171d, as amended by ~~L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 7~~ [K.S.A. 1998 Supp. 65-1,183], and K.S.A. 65-4512; implementing ~~L. 1998, ch. 143, secs. 7 and 10~~ [K.S.A. 1998 Supp. 65-1,183, and 65-1,186, and 65-4512]; effective Jan. 15, 1999; amended P- \_\_\_\_\_.)

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3-17-04

Kansas Department of Health and Environment  
Proposed Revocation  
Article 18a - SWINE AND RELATED WASTE CONTROL

28-18a-32. (Authorized by K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, and L. 1998, ch. 143, sec. 5 [K.S.A. 1998 Supp. 65-1,181]; implementing K.S.A. 1997 Supp. 65-164, K.S.A. 1997 Supp. 65-165, as amended by L. 1998, ch. 62, sec. 1, K.S.A. 65-166, K.S.A. 1997 Supp. 65-166a, K.S.A. 1997 Supp. 65-171d, as amended by L. 1998, ch. 143, sec. 1, K.S.A. 65-171h, and L. 1998, ch. 143, sec. 5 [K.S.A. 1998 Supp. 65-1,181]; effective Jan. 15, 1999; revoked P-\_\_\_\_\_.)

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Kansas Department of Health and Environment  
Proposed New Regulation  
Article 18a. SWINE AND RELATED WASTE CONTROL

28-18a-33. Groundwater protection requirements for swine waste-retention lagoons or ponds, swine waste management systems, and waste treatment facilities. (a) The provisions of this article shall not apply to any permitted swine waste-retention lagoon or pond or swine waste management system, or waste treatment facility that is in existence or that the secretary approved for construction before the effective date of this regulation, unless information becomes available showing that the swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility presents an imminent threat to public health or the environment.

(b)(1) The provisions of this article shall not apply to any existing or proposed swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility located at a swine facility if all of the following conditions are met:

(A) The swine facility existed on July 1, 1994 and is still in existence as defined in K.S.A. 65-1,178, and amendments thereto.

(B) The swine operator registered the swine facility with the secretary before July 1, 1996.

(C) The capacity of the existing or proposed swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility is no larger than that necessary

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to serve the facility as described in the registration application submitted before July 1, 1996.

(D) The separation distance from the bottom of the existing or proposed swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility to groundwater is less than 10 feet.

(2) Each operator of a swine facility meeting the requirements of paragraph (b)(1) of this regulation and proposing to use a swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility shall propose site-specific groundwater protection measures for the secretary's consideration for approval.

(c) Each new or expanded portion of a swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility other than those described in subsections (a) and (b) shall be located a minimum of 10 feet above the static groundwater level, as measured from the lowest elevation of the finished interior grade of the swine waste-retention lagoon or pond, the swine waste management system, or the waste treatment facility. Each swine operator or permit applicant for a swine facility shall notify the department at least two days before performing any site investigations to determine the static groundwater level at the site.

(d) Each swine operator or permit applicant shall ensure that each liner for a new or expanded portion of a swine waste-retention lagoon or pond, swine waste management

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system, or waste treatment facility meets the following requirements:

(1) If the new or expanded portion of the swine waste-retention lagoon or pond, swine waste management system, or waste treatment facility is not located over the Equus Beds or in a sensitive groundwater area, the materials used for the liner shall have a seepage rate of no more than 1/4 inch per day, except as required by K.S.A. 65-1,181, and amendments thereto.

(2) If the new or expanded portion of the swine waste-retention lagoon or pond, the swine waste management system, or the waste treatment facility is located in a sensitive groundwater area, the materials used for the liner shall have a seepage rate of no more than 1/10 inch per day.

(3) If the new or expanded portion of the swine waste-retention lagoon or pond, the swine waste management system, or the waste treatment facility is located over the Equus Beds, either an impermeable synthetic membrane liner shall be used or the material used for the liner shall consist of either of the following:

(A) Two or more layers of compacted soil designed to have a seepage rate of no more than 1/10 inch per day. To demonstrate that this seepage requirement is met, the soil liner seepage rate shall be determined within 12 months of placing the swine waste-retention lagoon or pond, the swine waste management system, or the waste treatment facility into operation. The test method used shall be the whole pond seepage test; or

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(B) any material that has been approved through the variance process in accordance with K.A.R. 28-18a-25.

(e) Each permit applicant or operator that conducts testing to determine the seepage rate shall submit four copies of the test results to the department.

(f) For the purpose of K.A.R. 28-18a-1 through K.A.R. 28-18a-33, an imminent threat to public health or the environment may be deemed to exist if physical, chemical, biological, or radiological substances or a combination of these substances is released into subsurface waters of the state and results in a concentration or amount of a substance in excess of the numerical criteria designated for aquatic life protection, agricultural use, or public health protection as provided in the "Kansas surface water quality standards: table of numeric criteria," dated December 6, 2004, which is adopted by reference in K.A.R. 28-16-28e. If the background concentration of a substance is naturally occurring and is greater than the numerical criterion, the background concentration shall be considered the criterion.

(Authorized by K.S.A. 2005 Supp. 65-171d; implementing K.S.A. 65-164, K.S.A. 2005 Supp. 65-171d, and K.S.A. 65-171h; effective P-\_\_\_\_\_.)

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